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### NJ Spotlight: Harmful Algal Blooms Invade New Jersey Lakes

COVID-19 isn't the only reason why swimmers should keep their distance this summer at some New Jersey lakes.

### NJ Spotlight: Plans Underway for Building Massive Offshore Wind Farms Along Jersey Coast

The Murphy administration is ramping up the state's efforts to build offshore wind farms by possibly doubling the amount of capacity it wants developers to build off the Jersey coast.

### The Hill: Dozens of facilities skipping out on EPA pollution monitoring have prior offenses

More than 50 facilities across the country that have faced enforcement actions for alleged Clean Water Act violations are among those taking advantage of an Environmental Protection Agency (EPA) policy that lets companies forgo pollution monitoring during the pandemic, an analysis by The Hill found.

### AMNY: New composting site comes to E. 7th Street on Lower East Side

Prior to the COVID-19 Pause that stopped daily routines, hundreds of local denizens embraced separating their plant-based kitchen scraps to become compost. Ecology-minded New Yorkers stored their peelings in the fridge or freezer, dropping them off at a collection point for composting.

### Adirondack Explorer: New threats bring call for fresh look at Adirondack lakes

As climate change ripples across the Adirondacks, researchers and activists are worried they don't know what warming water is doing to fish in the region's thousands of lakes and ponds.

### Bloomberg Law: Ninth Circuit Questions Next Steps in Dispute Over Pesticide Use

A panel of three Ninth Circuit judges appeared unsure during oral argument Tuesday how to resolve a dispute between states and environmental groups and the EPA over the agency's decision to allow the continued use of the pesticide chlorpyrifos.

### WNYT: NY using nearly \$5 million to buy forestland from EPA

New York State is using nearly \$5 million from the Environmental Protection Fund to buy forestland in the Rensselaer Plateau.

### NJ.com: Trump's EPA is failing to protect N.J. air from out-of-state polluters, judge rules

A federal judge slammed the U.S. Environmental Protection agency Tuesday for not doing more to protect New Jersey air from out-of-state pollution, giving the Garden State another win in one of its many lawsuits against the Trump administration.

### El Vocero: Lack of environmental planning costs

Climate change is a serious global threat that requires the adoption of urgent and firm measures to manage it. If no action is taken to mitigate its impact, passivity in the face of a problem that will worsen will increase global and government economic costs, which will affect the lives of all human beings.

Press of Atlantic City: Coastal flooding likely to increase in Atlantic City and Cape May over the next year

Atlantic City and Cape May are poised for an upcoming 12-month stretch with more coastal flooding events than the previous year, all a continuing part of a trend with more days of closed roadways, cars that have to be moved and water inundation.

Newsday: 9/11 first responders at increasing risk of cognitive disorders, Stony Brook studies say

World Trade Center first responders who inhaled toxic dust while working at Ground Zero are at increasing risk of developing dementia and other forms of memory loss, according to a pair of first-of-its kind studies by Stony Brook University researchers.

Newsday: Three shark sightings close Long Beach ocean, force restrictions elsewhere

Shark!

E&E News PM: FDA issues warning on toxic hand sanitizers

The Food and Drug Administration has issued a warning for toxic hand sanitizers that can cause blindness, damage to the nervous system and even death.

GreenWire: Tropical storm warning issued for Puerto Rico, Caribbean

Forecasters have issued a tropical storm warning for Puerto Rico and other parts of the Caribbean as officials expect a disturbance in the Atlantic to soon strengthen into a tropical storm.

InsideEPA.Com TSCA: Federal agencies tap NAS for advice on PFAS research

EPA and a slate of other federal agencies have contracted with the National Academy of Sciences (NAS) to advise them on how to coordinate their research on human health risks posed by per- and polyfluoroalkyl substances (PFAS) after a furor in 2018 highlighted divisions among agencies on the substances' risks.

InsideEPA.Com: New York Asks D.C. Circuit To Quickly Implement Ozone Transport Ruling

New York, New Jersey and environmentalists are urging the U.S. Court of Appeals for the District of Columbia Circuit to quickly implement its July 14 ruling scrapping and remanding EPA's denial of New York's petition for direct federal controls on hundreds of upwind air pollution sources.

Newsday (Op-Ed): Plume needs BNL treatment

Call it a tale of two plumes, a lesson in science, or a parable of corporate intransigence. Whatever the headline, the picture now is clear. The approach taken by Northrop Grumman and the U.S. Navy to containing the Grumman plume has been a failure. The proof lies just 35 miles to the east at Brookhaven National Lab, where a similar plume with similar chemicals posing similar threats to Long Island's aquifer is shrinking, not expanding.

NATIONAL

**Administration**

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## **FULL ARTICLES**

## **REGION 2**

## **NJ Spotlight**

<https://www.njspotlight.com/news/harmful-algal-blooms-invade-new-jersey-lakes/>

### **Harmful Algal Blooms Invade New Jersey Lakes**

They have been identified in a handful of lakes including Lake Hopatcong and Greenwood Lake

By Raven Santana, NJTV News

July 29, 2020

COVID-19 isn't the only reason why swimmers should keep their distance this summer at some New Jersey lakes.

“We have been seeing more frequent and more intensive harmful algal blooms during the summertime. Harmful algal bloom status can change within hours, so because of that it is really difficult to pinpoint whether a location has a presence of harmful algal bloom or not unless the location has been tested,” said Meiyin Wu, director of the New Jersey Center for Water, Science and Technology at Montclair State University.

The pea-soup-like harmful algal blooms (HABs), also known as cyanobacteria, have begun to pop up in New Jersey once again.

The blooms produce toxins that are harmful to humans and can be fatal to pets. They have been identified in a handful of lakes including Lake Hopatcong and Greenwood Lake as of July 22, according to an interactive map by the Department of Environmental Protection.

“There’s watch level, advisory level, warning level and danger level. So far, most of the testing results have been somewhere between watch and advisory level. It is very difficult for people to just look at the water and know if there are or there are not harmful algal blooms present,” Wu said. “It really requires laboratory testing to confirm.”

The interactive map and warning signs around lakes are part of a \$2.5 million expenditure approved by the Department of Environmental Protection for projects to evaluate innovative mitigation and prevention strategies against the HABs.

Jeff Tittel, director of the New Jersey Sierra Club, accuses the DEP of catering to political pressure and certain businesses instead of taking responsibility. He said the color index, which was part of a \$13 million initiative in state funding to mitigate the blooms, will not fix the problem.

“Warning systems are fine, but it’s not dealing with the root cause of the problem, which is stormwater runoff, and pollution and climate change. Those are the problems that the lakes are facing, and that’s a long-term problem,” Tittel said.

State Sen. Joe Pennacchio represents the district that encompasses both Greenwood Lake and Lake Hopatcong. He said the state needs to do more to help businesses that may be hit hard by the blooms on top of pandemic-related losses.

“Those lakes are not owned by municipalities. Any statewide water is owned by the state of New Jersey. Their water, their tax, their responsibility,” he said. “I wonder how they are going to survive. I would like the science and data applied to the lake, very similar to the issues that we’re having with COVID. It doesn’t seem that we have the science and data applied to these edicts that are going on. That way it could be explained and have transparency for the public.”

The DEP said, in addition to investigating reports by the public of suspected HABs, it also conducts lake flights every Tuesday from May to October to estimate algal activity. They strongly advise anyone heading to a lake [to use the interactive map](#) to check whether or not it’s safe to swim.

[This post](#) appeared first on [NJTV News](#).

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## **NJ Spotlight**

<https://www.njspotlight.com/2020/07/plans-underway-for-building-massive-offshore-wind-farms-along-jersey-coast/>

### **Plans Underway for Building Massive Offshore Wind Farms Along Jersey Coast**

The state’s utilities board drafts guidance possibly doubling the amount of capacity, ready to start seeking developers for giant project

By Tom Johnson

July 29, 2020

The Murphy administration is ramping up the state's efforts to build offshore wind farms by possibly doubling the amount of capacity it wants developers to build off the Jersey coast.

The New Jersey Board of Public Utilities recently issued draft guidance for a formal solicitation seeking developer interest in a project which the administration originally had targeted for up to 1,200 megawatts of offshore wind capacity, but now could involve up to 2,400 MW of new wind farms.

Offshore wind is one of the most important components of Gov. Phil Murphy's ambitious clean-energy goals that aim to transform New Jersey into being 100% reliant on cleaner fuels to power its transportation sector and to keep the lights on for businesses and homes by 2050.

"Using lessons learned from our first successful solicitation of 1,100 mw, we are very excited to move forward with our second offshore wind solicitation, which could bring the state up to a total of 3,500 mw of offshore wind energy," said BPU president Joseph Fiordaliso.

An executive order issued in 2018 by Murphy directed BPU and other state agencies to move toward a goal of 3,500 MW of offshore wind generation by 2030. In June 2019, the BPU approved the state's first offshore wind farm, the 1,100 MW Ocean Wind facility off Atlantic City by Ørsted. It is anticipated that it will be operating in 2024.

Last November, Murphy signed another executive order, this time to increase the state's offshore wind generation goal to 7,500 MW by 2035. The action signified the competitiveness among states along the Eastern Seaboard to become the hub of a new offshore wind industry. New York has even more aggressive goals than New Jersey to use offshore wind as a way of supplying electricity to customers.

### **Eyeing thousands of new jobs**

Advocates argue the transition to clean-energy projects like offshore wind could fuel a green economy that will provide thousands of well-paying jobs, at the same time helping the coastal state in combating the impacts of climate change.

Last month, Murphy unveiled plans to develop the first port in the nation solely geared to serve the offshore wind sector. Located on Artificial Island in Salem County, the port is anticipated to be the assembly point for the turbines to power offshore wind farms along the New Jersey coast, but also elsewhere on the Eastern Seaboard.

The ramp-up was welcomed by clean-energy advocates, who have been pushing New Jersey to move even more aggressively on building offshore wind capability.

"The investment the earlier we make, the better it is," said Doug O'Malley, director of Environment New Jersey. "It is a race to the top for offshore wind."

While the administration's offshore wind goals enjoy wide support, including from some of New Jersey's major business groups, there is still some wariness about the potential cost and impact on energy bills.

"We support offshore wind and the governor's clean energy goals, but we still want to do it in a responsible manner," said Ray Cantor, a vice president at the New Jersey Business & Industry Association.

There are still some unanswered questions regarding the first solicitation, Cantor noted, citing where the onshore connections from the offshore wind farm will be and what it will cost, as well as the impact on ratepayers.

The current timeline in the second solicitation guidance document anticipates the BPU considering the issue in September. Applications would then be accepted in December 2020 with a final decision by the board in June 2021.

In the first solicitation, three developers vied to build the first 1,100 MW of offshore wind capacity, with the BPU accepting an application by Ørsted, a Danish company that has emerged as the biggest player along the Eastern Seaboard.

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## **The Hill**

<https://thehill.com/policy/energy-environment/509489-dozens-of-facilities-skipping-out-on-epa-pollution-monitoring-have>

### **Dozens of facilities skipping out on EPA pollution monitoring have prior offenses**

By Rachel Frazin

July 29, 2020

More than 50 facilities across the country that have faced enforcement actions for alleged Clean Water Act violations are among those taking advantage of an Environmental Protection Agency (EPA) policy that lets companies forgo pollution monitoring during the pandemic, an analysis by The Hill found.

The temporary EPA policy, announced in March, says industrial, municipal and other facilities do not have to report pollution discharges if they can demonstrate their ability to do so has been limited by the coronavirus.

The Hill first reported that 352 facilities have skipped water pollution monitoring requirements under the policy, which applies to air pollution as well. Of those facilities, 55 have faced formal enforcement actions in the past five years from either the EPA or state regulators.

“A significant number of these plants already have a history of violations and for that reason should be more closely monitored to make sure the violations aren’t repeated or that they are following the requirements of their consent decrees,” said Eric Schaeffer, former director of the EPA’s Office of Civil Enforcement who is now executive director of the Environmental Integrity Project.

Schaeffer’s group, which did its own analysis of the EPA data, found that over the past three years, 167 facilities, or nearly half of the 352, had at least one effluent violation, meaning they exceeded the amount of permissible pollution.

Some had a small number of violations, while others had dozens. American Samoa Shipyard Services had 418 violations, the most of any facility on the list.

“Some of these facilities have a history of not monitoring or reporting discharges,” Schaeffer said. “I’d be a little concerned that any recent failures to comply with these monitoring and reporting requirements are just more of the same, rather than any result of the pandemic.”

The EPA’s implementation of the temporary policy followed requests from certain industries asking for relief from obligations they described as nonessential during the pandemic. Environmental groups later sued over the policy, arguing that polluters would be empowered to skirt the rules without proper monitoring.

Last month, top EPA enforcement official Susan Parker Bodine said in a letter to lawmakers that about 300 facilities with Clean Water Act permits had decided to forgo their pollution monitoring requirements under the temporary policy.

“To date, out of over 49,600 facilities with a Clean Water Act discharge permit, only about 300 facilities have used the COVID-19 code,” Bodine wrote, referring to a code that entities skipping their pollution monitoring were told to put into the EPA’s system. “This is about six tenths of one percent.”

The Hill’s analysis found that of the enforcement actions taken against 55 facilities over the last five years, a majority of them involved settlements or penalty payments.

Many actions were in response to recent violations, though some dated back to the 1980s.

The alleged violations also varied in size and scope.

In one of the bigger cases, the Kensington Gold Mine in Alaska last year had to pay penalties totaling \$534,500 after an EPA inspection in 2015 found 200 wastewater discharge violations.

Lynn Thorp, national campaign director for Clean Water Action, said the fact that some of these facilities have a history of violations underscores her belief that the EPA policy is too broad and that facilities should be evaluated on a case-by-case basis.

“Perhaps a history of violations would cause a permit overseer in a state or an EPA regional office to say, ‘Not sure this is a good idea,’ ” said Thorp, whose group is among several suing the EPA over the temporary policy. “Or they might know all about that history and those violations [and] that problem that led to them have been solved and they would say, ‘This is just not relevant.’ ”

“The people who oversee these permits need to be able to act on red flags like that and make decisions on an individual basis,” she added.

The EPA did not provide a comment for this story.

The Hill’s review found that sewage and wastewater treatment plants appear most frequently on the list of 352 facilities, with more than 100 locations taking advantage of the policy that’s slated to expire at the end of August.

Industries that appeared frequently on the EPA’s list, which did not include facilities typically required to monitor other types of discharges like air pollution, were concrete production facilities and shipyards.

Sectors that are often targeted by environmentalists, such as fossil fuels and chemicals, make up a smaller share. The Hill identified about seven oil and gas facilities, six minerals mines or quarries and just a handful of coal mines and chemical company facilities.

Many of the wastewater facilities on the list were small ones that serve schools or parks, while others serve major metropolitan areas like parts of New York City.

Representatives for wastewater utilities said the EPA policy has been beneficial to protect the health of city workers, arguing the lack of monitoring was not a major concern because workers can use data to project water quality, even if they reduce the amount of sampling.

“My argument is because of how small the threat is, because of the way they know how to operate, they can really provide safety with projected monitoring,” said Mike Keegan, an analyst at the National Rural Water Association.

“You can make some good speculation that you’re not really putting the public at risk there,” Keegan said. “You also can’t derive the alternative — that they’re violating the permit — either. The data is limited.”

**AMNY**

<https://www.amny.com/news/the-villager/new-composting-site-comes-to-e-7th-street-on-lower-east-side/>

**New composting site comes to E. 7th Street on Lower East Side**

By Tequila Minsky

July 28, 2020

Prior to the COVID-19 Pause that stopped daily routines, hundreds of local denizens embraced separating their plant-based kitchen scraps to become compost. Ecology-minded New Yorkers stored their peelings in the fridge or freezer, dropping them off at a collection point for composting.

Union Square and Washington Market are two of the 50+ Greenmarkets that had accepted organic materials for compost and in the Village, Chelsea, East Village, and Lower East Side, bins consigned on a weekly schedule provided seven more convenient drop-off sites, a program of the Lower East Side (LES) Ecology Center. On Tuesday mornings, this writer would bring eggshells, coffee grounds, rinds and peelings to a collection bin on 6th Ave. and Spring Street; COVID-19 halted all this activity.

With no place to take their fruit and veggie scraps, stale bread and dried-up flowers and dead plants, many who so diligently brought these for composting, with much distress threw them away. For others, a good habit is hard to break as they continued to separate and —so it won't smell, freeze—store their organic refuse.

On July 19, the LES Ecology Center launched a Sundays community drop-off site with collection bins outside its E. 7th St. Community Garden between Aves B and C, hours 8 a.m. to 5 p.m.

On that first day of collection, E. 9th Street residents, musicians Ellen Mandel and Michael Lydon brought a variety of plastic bags and containers holding one week's worth of kitchen peelings for composting.

"For years I've dropped off here," says Mandel, who with Lydon eats mostly non-meat meals at home, thus generating a lot of compost-ready materials.

Throughout the afternoon a steady stream of East Village residents stopped to make their organic deposit. Overseeing the drop-offs at the reopening of this site, LES Ecology Center staff member Kyleen Sanchez remarked, "People are really excited to be here. They've been saving scraps and were really sad to throw them away."

Researching for a compost drop-off site and finally finding the opening of the E. 7th St. site for compost collection brought Suzanna Bredenberg from Hell's Kitchen to the East Village on Sunday, July 26.

"This is the first time I've been on a subway," she announced, having taken the R train and walked blocks east to get to the community garden. It was time to empty the freezer. Previously she would drop-off compost materials at Pier 84 on 44th St.

Similarly, one Stuyvesant Town resident traveled by Citibike with her organics. "I was disappointed when in May, they discontinued our complex's Brown Bin recycling program," she said. (In early May, Department of Sanitation suspended its Brown Bin program, which collected kitchen scraps deposited in bins at homes and some large apartment complexes.)



Additionally, the LES Ecology Center's East River Park Compost Yard, located on the East River along the service road south of the amphitheater, began accepting organic materials on July 13.

Recently, City Council restored \$2.86 million for community composting programs, however, this amount falls short of restoring all programs.

At least 10 people a day stop at the Union Square Greenmarket info table to ask when will compost drop-off begin again there.

The LES Ecology Center is rolling out a phased reopening of food scrap drop-off sites as it works to bring back the breadth of its program. It is hoped that the Union Square site will reopen soon. In the meantime, it continues to have a presence at that Greenmarket, selling compost, potting soil and compost equipment.

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## **Adirondack Explorer**

<https://www.adirondackexplorer.org/stories/new-threats-bring-call-for-fresh-look-at-adirondack-lakes>

### **New threats bring call for fresh look at Adirondack lakes**

By Ry Rivard

As climate change ripples across the Adirondacks, researchers and activists are worried they don't know what warming water is doing to fish in the region's thousands of lakes and ponds.

Now they're looking to an old problem for a solution.

In the 1980s, acid rain was crippling lakes across the Adirondacks, but nobody was sure how badly.

To figure it out, the state helped launch a massive survey of the damage. The extraordinary effort, unlike any undertaken before or since, sent researchers through forests, across wetlands and up mountains to measure, sample and fish from half of the region's lakes in just four years.

Between 1984 and 1987 the state-backed Adirondack Lake Survey Corp. visited 1,469 lakes and ponds looking for patterns in the geology, chemistry and life of each lake.

Surveyors found acid rain had emptied the fish from at least 100 lakes and ponds. The findings helped recast the image of the Adirondack Park, from a pristine refuge apart from the world to a fragile part of it. The work also informed Congress's changes to the federal Clean Air Act in 1990, which have since helped curb acid rain.

Now, three decades later, the survey corporation's limited focus has stayed on the remnants of acid rain. Even that mission is in danger of shrinking further because of budget cuts.

Over the same time, the climate's changes have become noticeable, and other risks such as road salt runoff and invasive species have grown obvious.

This has prompted researchers and activists working with the existing lakes survey team to call on the state to back another survey of hundreds of lakes to figure out what's going on in them. They have met with the governor's environmental staff, Department of Environmental Conservation executives and legislative leaders about it.

They suspect new waves of destruction caused by warming and new pollution are taking acid rain's place. How will cold-water fish, like trout, survive in warmer waters? Are warmer or saltier waters causing lakes to shut down? Why do lakes seem to get browner?

"What do we not know?" said Willie Janeway, the head of the Adirondack Council and also of the board that oversees the survey corporation.

The Council and the survey corporation are part of a group pushing for a three-year plan to visit several hundred lakes.

In an eight-page proposal, the group argues that climate change is the biggest danger because it will change temperatures, rain and snowfall patterns, ice cover, runoff and limit the range of trout. But those changes are mixed with the lingering effects of acid rain and the newer threats, like salt and leaking septic systems. "Many lakes are exposed to two or more major stressors simultaneously, raising the prospect of profound changes in their biology, chemistry and physics," the group argues.

In a sort of worst-case scenario, a warming lake filled with salt would stop circulating—and mixing deep and shallow waters—each year and become stagnant, covered in toxic algae that feeds on a stew of sewage. The researchers hope that by going out, they can find lakes before they collapse, rather than after it's too late.

The new survey, called a 21st Century Adirondack Lake Survey, could cost about \$6 million. So it's not clear if anyone can get the state interested, especially with its budget now in tatters. Even so, the team of researchers lining up to work on the project, if it were ever funded, is a who's who of institutions that study water in upstate New York—Cornell University, Paul Smith's College, Rensselaer Polytechnic Institute, the State University of New York, Syracuse University and the U.S. Geological Survey, among others.

It's not as if no one is doing any of this work: Paul Smith's College's Adirondack Watershed Institute, for instance, annually tests water quality at nearly 70 lakes. Rensselaer is intensely studying Lake George.

But much of the research—by professors and graduate students, environmental groups or lake associations here and there—creates a patchwork of data about Adirondack lakes that fails to paint a larger picture of the whole park's waterways.

Gaps are growing between what researchers knew during the heyday of acid rain research and what they know of current threats. The 1980s survey collected details of the chemicals in a lake, the lake's temperature and the fish found there.

A few years ago, Taylor Leach, then a postdoctoral researcher at Rensselaer, tried to cobble together a complete picture of lake chemistry and lake life using data from different researchers that were doing one thing but not another.

She found "a mess."

The survey corporation had new chemistry data but not new data on fish or what they eat, like zooplankton. Leach turned to the Adirondack Effects Assessment Program, a defunct program once backed by the federal government, to get data on lake life.

She called people who had retired from the state to figure out how they did sampling years ago so she could compare that to sampling done more recently. She went back over old paperwork to reclassify some small aquatic life that had been labeled one thing then and is called another thing now.

Eventually, she was able to assemble a larger picture of "long-term" conditions in 28 lakes.

That's 1% of the lakes and ponds in the Adirondacks. The reliable information she published also covers just two decades, some of it ending when one program stopped collecting data on aquatic life.

While it may be hard to tie all the threads together, it's impossible to replace a missing string.

"Once you miss a data point, you can't go back and collect it," Leach said.

After its big acid rain survey in the 1980s, the survey corporation continued to sample 52 ponds each month—a task that once required traveling more than 4,000 miles by car, 40 miles by foot or bike, and 160 miles or more by helicopter—until it faced budget cuts.

Now, though, the survey looks at just 37 ponds and it samples only seasonally rather than monthly.

Part of the reason for cuts is that acid rain, the survey's original focus, isn't as big a deal. And what it finds is good news, like the slow recovery of Adirondack lakes.

"It's not a bad problem to have, finding waters that are actually doing well, as opposed to waters that aren't," said Philip Snyder, the survey's laboratory manager.

Charles Driscoll, a Syracuse professor who used the 1980s survey data to help write a major analysis of acid rain's effects on fish, said the corporation hadn't shifted its monitoring to look at new problems, like climate change.

"I think if the Adirondack Lake Survey Corp. was being proactive they would have been thinking about pivoting toward more emerging issues," he said.

Now, it seems, they are. In the Adirondacks, every few decades, there's a new survey to deal with a new problem. The first, started by the state in the late 1920s and early 1930s, looked at fears about logging and its effect on the fish. In the 1970s, research began looking at the effects of rain on fish. Paul Smith's College's ongoing work captures telltale signs of septic leaks and road salt.

"I don't think you're ever going to find many other places in the world where we know as much as we know," said Cliff Kraft, the director of Cornell's Adirondack Fishery Research Program. But that isn't enough to figure out just how much things are changing right now.

Even if researchers found terrible effects, Kraft wonders what difference it might make in the current political climate. While acid rain research helped guide policymakers, climate research so far has not done as much at the federal level, where lawmakers have put short-term economic activity above science.

"Honestly, I live in a world—we all live in a world right now—where you have 100,000 people dying and people look at that and say, 'What should we do about that, well, maybe we should go to the beach,'" Kraft said in a Zoom video conference just as the death toll from the coronavirus outbreak had passed 100,000 Americans.

Peter McIntyre, who will inherit the fishery program at Cornell when Kraft retires, was more optimistic that bad news could be turned into good policy.

Right now, there are some rules of thumb for lakes affected by warming waters. If scientists could make sure they're right, they could produce work that shows how susceptible some lakes might be to pollution. That means towns and villages could crack down on leaking septic tanks before lakes became dangerously toxic—or show others may be fine as they are.

The work could also help the state figure out which lakes are worth stocking as waters warm, or help come up with breeds of trout able to cope with warmer waters.

"A lake is not a lake is not a lake," McIntyre said. "It really depends on the details of how that lake operates."

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## **Bloomberg Law**

<https://news.bloomberglaw.com/environment-and-energy/ninth-circuit-questions-next-steps-in-dispute-over-pesticide-use>

### **Ninth Circuit Questions Next Steps in Dispute Over Pesticide Use**

By Maya Earls

July 28, 2020

A panel of three Ninth Circuit judges appeared unsure during oral argument Tuesday how to resolve a dispute between states and environmental groups and the EPA over the agency's decision to allow the continued use of the pesticide chlorpyrifos.

Judges Jay S. Bybee and Jacqueline H. Nguyen both questioned what the EPA's options were if they decided to set aside the agency's order.

Frederick Brodie, who argued on behalf of five states including New York and California, said merely setting aside the order "wouldn't satisfy complete relief."

Brodie said the court should remand the agency's decision with instructions to revoke the tolerances, or the amount of pesticide residue the agency allows on crops. He said the Food Quality Protection Act imposes a nondiscretionary mandate that tolerances can only be in effect if they're found to be safe.

"There's been no findings of safety for past five years," he said.

Because the EPA's own risk assessments found chlorpyrifos unsafe in drinking water, food, and other ways people may be exposed, the agency can't leave the pesticide's tolerances in effect, according to Patti Goldman, attorney for Earthjustice, which represents environmental groups in the case.

Mark Walters, assistant attorney general for the Department of Justice, disputed the petitioner's claims that the agency has found that exposures to the chemical at levels below current tolerances has developmental effects. Under the petitioner's argument, if there's a question about a chemical's safety then the agency will always have to revoke its tolerances, he said.

Walters said if the court finds the EPA made a legal error and misconstrued its obligations under the statute, then it should remand to the agency so it could either issue a safety finding or revoke the tolerances.

California, Hawaii, and New York have banned the chemical.

Studies have linked chlorpyrifos to low IQ and other developmental delays. The initial maker of the chemical—Dow AgroSciences, now Corteva Agriscience—voluntarily withdrew it from household use in 2000.

The EPA decided in 2017 not to ban the use of the pesticide on crops. The agency is scheduled to make a final decision on the pesticide's safety in 2022.

Judge Jed S. Rakoff, sitting by designation from the U.S. District Court for the Southern District of New York, also served on the panel.

The case is *United Latin Am. Citizens v. Wheeler*, 9th Cir., No. 19-71979, 7/28/20.

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## WNYT

<https://wnyt.com/news/environmental-protection-fund-new-york-state-forest-land-rensselaer-plateau/5809601/?cat=10114>

### **NY using nearly \$5 million to buy forestland from EPA**

July 28, 2020

New York State is using nearly \$5 million from the Environmental Protection Fund to buy forestland in the Rensselaer Plateau.

Governor Cuomo announced the purchase of 5,700 acres in the Taconic Ridge State Forest and the Berlin State Forest.

The land stretches along the Rensselaer County borders with Vermont and Massachusetts.

The land buy will provide additional public access to the Taconic Cres Trail. It also preserves the Little Hoosic River, which is a popular fishing spot for wild trout.

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## NJ.com

<https://www.nj.com/news/2020/07/trumps-epa-is-failing-to-protect-nj-air-from-out-of-state-polluters-judge-rules.html>

### **Trump's EPA is failing to protect N.J. air from out-of-state polluters, judge rules**

By Blake Nelson

July 28, 2020 (updated)

A federal judge slammed the U.S. Environmental Protection agency Tuesday for not doing more to protect New Jersey air from out-of-state pollution, giving the Garden State another win in one of its many lawsuits against the Trump administration.

In a sharply worded order, U.S. District Judge John Koeltl said the agency “repeatedly failed to act” to safeguard public health, forcing the court “to compel the EPA to take action that is long overdue.”

The agency has five days to respond to the order, and the judge told federal regulators to develop rules by March 15 to fight smog that rolls into New Jersey.

State Attorney General Gurbir Grewal called the decision a “big win.”

“It should not have taken a lawsuit for EPA to protect our environment,” he Tweeted.

EPA spokeswoman Mary Mears wrote in an email that the agency was reviewing the decision.

New Jersey has some of the worst air in the nation, which is partially because other states fail to control their pollution and the wind moves it to Garden State skies. Hundreds of thousands of New Jersey residents struggle with asthma, and about 100 die every year.

New research has also found a connection between air quality and the likelihood someone will die of the coronavirus.

Another court previously told the EPA to more strictly uphold the Clean Air Act’s “Good Neighbor” provisions, and New Jersey sued earlier this year after it said the EPA was dragging its feet. The agency argued it needed more time to develop regulations for polluters outside the state.

The judge also told the EPA to reimburse New Jersey, Connecticut, Delaware, Massachusetts and New York City and state for the money they spent in court.

The state has sued the EPA more than a dozen times since 2018, including two lawsuits filed last week.

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## **El Vocero**

[https://www.elvocero.com/economia/cuesta-la-falta-de-planificaci-n-ambiental/article\\_714eda9c-d066-11ea-ab78-3bfd3ea39579.html](https://www.elvocero.com/economia/cuesta-la-falta-de-planificaci-n-ambiental/article_714eda9c-d066-11ea-ab78-3bfd3ea39579.html)

### **Lack of environmental planning costs**

Experts assure that the Island lacks a preventive structure in the face of the advance of climate change

By Brenda A. Vázquez Colón

July 28, 2020 (updated)

Climate change is a serious global threat that requires the adoption of urgent and firm measures to manage it. If no action is taken to mitigate its impact, passivity in the face of a problem that will worsen will increase global and government economic costs, which will affect the lives of all human beings.

This statement is part of the conclusion of the study by Nicholas Stern, a UK economist, academic, and economic adviser, who served as the World Bank's Senior Vice President for Economic Development from 2000 to 2003.

The document concludes that climate change will affect basic elements of human life such as access to water, food production, health and the environment. As global warming occurs, hundreds of millions of people could suffer from hunger, water scarcity, and coastal flooding, realities that are not foreign to Puerto Rico and that directly affect the local economy.

"The effects of global warming could reduce agricultural productivity worldwide by up to 30%. Soils are dying, there is a lot of deforestation, erosion and droughts. It is raining in different places and with different patterns, causing permanent damage to flora and fauna. On the Island, there are cracked forests and the levels of the underground currents are decreasing in towns where it rains a lot like Jayuya and Orocovis. I have been saying

for 25 years that climate change must be addressed and the government does nothing for an energy reform; It is going in the opposite direction ”, explained the environmentalist Juan Rosario.

The results of the economic models of the Stant study indicate that the total cost of climate change will be equivalent to the loss of 20% per year of global gross domestic product (GDP). The environmental investment made in the next 20 years will have a profound impact on the climate during the second part of this century and the next. It will also cause a major disruption to economic and social activities, the scale of which would be comparable to the wars and economic depression of the first half of the 20th century. Although it will no longer be possible to prevent climate change, it is possible to protect societies and economies from its consequences to some degree, with better planning and creating infrastructure and crops that are more resistant to climatic conditions.

“Here they continue to give permits to build on the coasts and continue to destroy forests. The approach to economics is wrong. They sow cement, the economy has no future with the destruction of the planet. 70% of the materials we use, after six months is in landfills and the planet can no longer take it anymore. The water, food and pollution crises, with the climate change scenario, are going to get worse ”, declared Rosario.

The environmentalist recommends a circular and restorative economy that ensures that the materials remain usable for longer with their reuse, but to achieve this, a public policy that supports it is necessary.

### **Absent prevention**

“There is no policy for the management of natural resources that allows addressing climate change. We are in the greatest crisis in human history and we may see the extinction of the human being in this century. There are specialists who affirm that now the problem is not Covid-19 - which should be a common cold - it is the contamination that is killing us because it weakens our immune system. Since 2018, it was suggested that we have the perfect conditions for a pandemic, ”declared Rosario.

According to his point of view, in Puerto Rico everything is fixed after the catastrophes and there is no prevention mentality, so the result is patches and not solutions.

“The expense is for the resources of collecting, cleaning and cleaning, not for health prevention or education. The coronavirus is going to kill more people for the economy than for the contagions, because people lose their jobs and have stopped taking care of their illnesses. The health system is captured by the pharmaceutical and insurance companies, it is getting worse every day, ”Rosario reacted.

Regarding the issue, the economist José Alameda agreed with the lack of a plan to address environmental changes and the lack of awareness in the country on this issue.

“The social cost of hurricanes Irma and María, was higher than the principal of the country's debt. This problem cannot be controlled if the need for a development design to mitigate environmental damage is not recognized. We are a Caribbean country that is subject to problems such as erosion, so it must be incorporated into development plans such as construction permits, ”said the economist.

He understands that the impact on the Island will be catastrophic in the future if priority is not given to this sector, which as consequences will further affect local economic development.

“Neglecting changes and natural disasters will generate costs. The impact is not seen now, it will be seen in the future. You have to invest in structures and organizations that help mitigate environmental damage and I don't see much being done here for that. All this costs us all in the way of living, because when a river passes that takes your home or there is a drought, the common citizen is affected. No investments are made for this, there is too much partisan politics. You have to redesign a country to recognize the maelstrom of these impacts and President Donald Trump does not want to recognize the climate problem, ”said Alameda.

The environmentalist Pedro Sedé agrees with them, for whom the wrong decisions made in Puerto Rico do not contribute to a real change to tackle environmental contamination, nor to the preventive preparation of natural events that will continue to occur, such as droughts.

“Before, the houses used to have cisterns, tanks to collect rainwater and that is not implemented in the building code as a requirement. There is no environmental social justice for the sectors hardest hit by this crisis. The bill to stop construction on the coasts never progressed and Flood Regulation 13, which takes into account sea level rise, is not passed. There are also pests in agriculture and the coronavirus pandemic brought a crisis in meat production. We have to change how decisions are made,” said Sede, while reaffirming that plans must start to be carried out differently, looking for alternatives that protect natural resources.

“Using methane gas to generate electricity is replacing one fuel for another. What you have to do is help communities generate their own electricity. Luma's contract to manage the Electric Power Authority (PREPA) is to strengthen the transmission system, it does not promote renewable energy, it is the same model. It is also necessary to restructure the spaces of the shopping centers regarding the way they generate energy. You have to invest in a social consensus from all sectors,” he added.

### **New opportunities**

Finally, the Stern report warns that climate change will generate great commercial opportunities, with the creation of energy technologies. These markets could reach an annual value of billions of dollars and constitute an important source of employment, so avoiding climate change and promoting economic growth go hand in hand.

"Mitigating ecological damage and creating new forms of renewable energy could bring new developments and companies that would create jobs, as well as developing the area of research," said Alameda.

The government had made its commitment so that by 2020, 40% of the energy produced locally is renewable, a goal from which they are quite distant, since penetration barely reaches 2%, a percentage that has remained almost static for the past 12 years.

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### **Press of Atlantic City**

[https://pressofatlanticcity.com/news/local/coastal-flooding-likely-to-increase-in-atlantic-city-and-cape-may-over-the-next-year/article\\_e80b1c71-9215-56c5-bfe0-78c41220aa87.html#2](https://pressofatlanticcity.com/news/local/coastal-flooding-likely-to-increase-in-atlantic-city-and-cape-may-over-the-next-year/article_e80b1c71-9215-56c5-bfe0-78c41220aa87.html#2)

### **Coastal flooding likely to increase in Atlantic City and Cape May over the next year**

By Joe Martucci

July 28, 2020





Atlantic City and Cape May are poised for an upcoming 12-month stretch with more coastal flooding events than the previous year, all a continuing part of a trend with more days of closed roadways, cars that have to be moved and water inundation.

Between May 2020 to April 2021, Atlantic City is expected to have anywhere between eight and 14 high-tide flooding days, while Cape May is expected to have between six and 11. During the last coastal flooding year, Atlantic City had nine flood days, while Cape May saw 7, according to a report from the National Oceanic and Atmospheric Administration.

Across the United States, the median average of coastal flooding was four days in the 2019 flooding year, just shy of the record set during the 2018 flooding year.

The administration released its annual State of U.S. High Tide Flooding, which include a recap of the 2019 flooding year (May 2019-2020), as well as an outlook for the May 2020 to April 2021 period.

The report, which was released earlier this month, specifically documents the change in nuisance flooding, which is also known as minor flood stage, typically when tides are 1.75 to 2 feet above the daily average high tide.

“America’s coastal communities and their economies are suffering from the effects of high tide flooding, and it’s only going to increase in the future,” said Nicole LeBoeuf, acting director of NOAA’s National Ocean Service.

NOAA forecasts that the peak season for coastal flooding will be during the fall. While nor’easters typically bring the most significant flooding during the winter, the minor, nuisance flooding days the report focuses on happen while the water temperatures are warmest.

“During the fall, you do have a change of seasons occurring, you tend to get more northerly winds. ... There’s an important seasonal cycle occurring as well,” said William Sweet, oceanographer, NOAA’s National Ocean Service and lead author of the report. “Sea levels are higher during the fall time, than the winter times. That’s on the order of a half foot. ... When the winds begin to really blow in September and October, the sea level heights are higher.”

The northeast Atlantic Ocean, which includes New Jersey, is already a hot spot for flooding. Compared with the rest of the country, the region has the highest likelihood of seeing the most number of coastal flooding events, between six and 11 days throughout the May to April reporting period.

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“There’s a very wide, shallow continental shelf in the Atlantic Ocean. The West Coast has a steep continental shelf. ... The East Coast has a high rate of sea level rise,” Sweet said.

NOAA scientists says a neutral El Nino Southern Oscillation (ENSO) cycle, which is based off of the waters around the equator in the Pacific Ocean, played a role in this forecast. However, this role doesn’t sway the forecast one way or another.

Rather, NOAA scientists say, climate change is a factor. About a third of sea level rise is due to the thermal expansion of the ocean. The warmer the waters, the more space the ocean occupies, creeping up the shoreline.

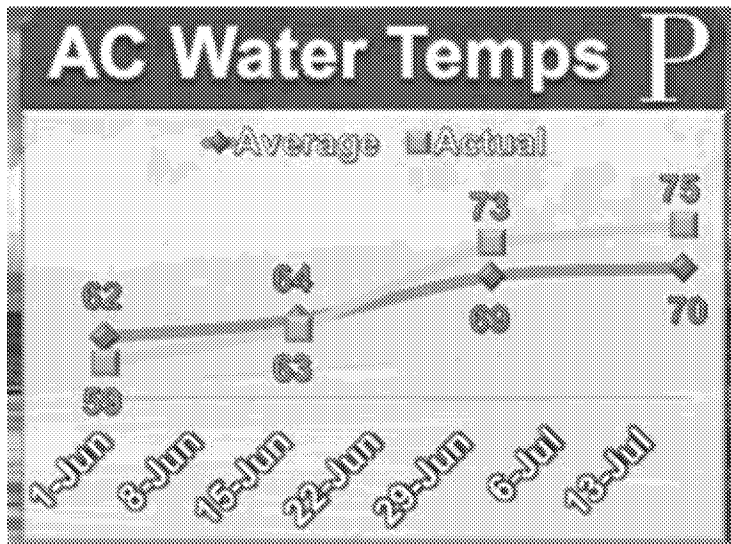
“Long term, we know that the sea level rise has been happening. We’ve seen that from NOAA over the years,” said Lou Belasco, floodplain manager for the city of Cape May. “From a flooding standpoint, we look to bolster our natural systems. We’ve looked to bolster the shoreline along the harbor front. If we can increase those wetlands and soak up some of the sea level rise, we can offset some of the losses,” he said, adding, “It’s a two-pronged approach. ... We also recognize that there are hardscape solutions that need to be done. There are areas that we look to raise the roadway, like on Yacht Avenue. We’ve had talks with the Army Corps of Engineers for Wilmington and Beach to raise the road there.”

The 2019 flooding year, from May 2019 to April 2020, saw water temperatures nearly 1.5 degrees above the 20th Century average between 60 degrees north and 60 degrees south latitude, continuing a positive streak seen each year since the late 1970s.

“The national takeaway is ... the underlying trend is accelerating,” Sweet said.

After a seasonable June, Atlantic City’s water temperatures have been running above average for much of July, with a 75 degree reading July 16, five degrees above the 70-degree average.

The forecast flooding events are both below the projections expected for 2030, where 20 to 35 days of high tide flooding is



Water temperatures in Atlantic City from June 1 through July 16. Sea surface temperatures rose to well above average levels by July 16, whose 75 degree temperatures is warmer than the average temperature at any point during the year.

expected in Atlantic City and 15 to 30 days of flooding are expected in Cape May.

“It’s (minor flooding not from a storm) not something I remember as a kid. It happened hardly ever. Usually, flooding was associated with some kind of weather system,” Belasco said.

According to a Rutgers University report released in 2019, sea levels rose an average of 1.5 feet along the New Jersey coast from 1911 to 2019, compared with the global average of 0.6 feet.

### **The 2020 hurricane forecast increases again in July update**

The July 7 Atlantic Hurricane season update from Colorado State University has another increase in the amount of tropical activity expected.

Including the five named storms that occurred at the time of the July 7 update, which put the 2020 Atlantic Hurricane season on a record breaking pace, CSU forecasts 20, named tropical storms or hurricanes to occur. That is a slight increase from the 19 last predicted in the June update. Out of the 20, 9 hurricanes and 4 major, category 3 or greater (at least 111 mph sustained winds) are forecasted, the same as the June update.

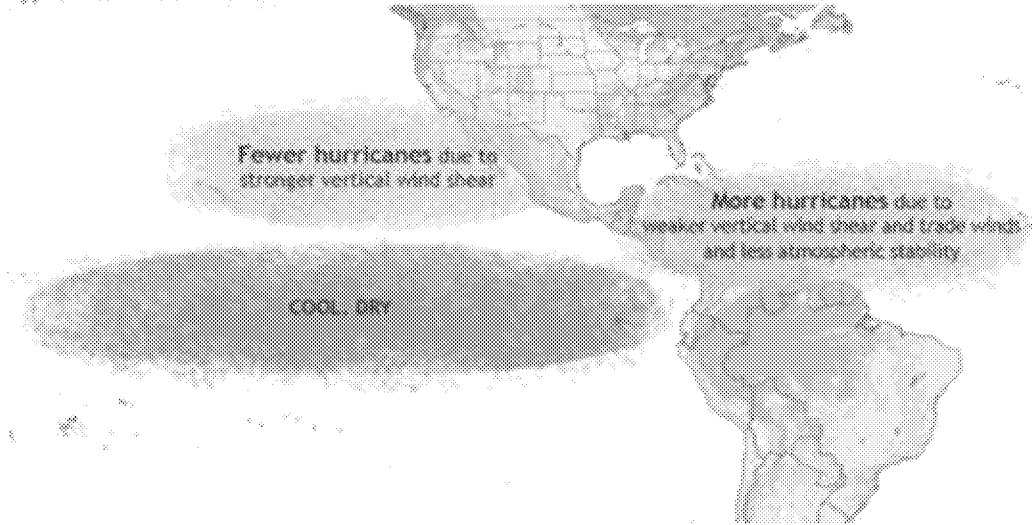
"We have maintained our above-average seasonal hurricane forecast for the 2020 Atlantic season." the [CSU report read](#), which is led by [Philip J. Klotzbach](#), Michael M. Bell, and Jhordanna Jones.

The 1981-2010 average of activity includes 12.1 tropical storms, 6.4 hurricanes and 2.7 major hurricanes, respectively.

There still remains an above average risk of a major hurricane making landfall on the East Coast of the United States, including the Florida Peninsula. The 45% chance is virtually unchanged from earlier updates. On average, there has been a 31% probability in the last century.

CSU attributes warmer than average waters in the subtropical Atlantic Ocean, slightly warmer than average waters in the tropical Atlantic as reasons for the active forecast. Furthermore, a possible transition from a neutral El Nino Southern Oscillation to a La Nina late this summer would promote an active season. In a La Nina, there's a lack of wind shear, or change of winds with height, which can rip storms apart.

Typical La Niña influence



Tropical cyclone names rotate every six years. Exceptionally notable hurricane names, such as Sandy, become retired by the World Meteorological Organization. However, no names were retired in 2014, meaning 2020 will have the same list as then.



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**Newsday**

<https://www.newsday.com/news/health/9-11-first-responders-dementia-stony-brook-study-1.47428142>

**9/11 first responders at increasing risk of cognitive disorders, Stony Brook studies say**

By Robert Brodsky

July 28, 2020



World Trade Center first responders who inhaled toxic dust while working at Ground Zero are at increasing risk of developing dementia and other forms of memory loss, according to a pair of first-of-its kind studies by Stony Brook University researchers.

Roughly 15% of 9/11 first responders are showing signs of cognitive impairment at roughly three times the rate of the general population in their age bracket, said Sean Clouston, an associate professor of family, population and preventive medicine at Stony Brook University, who co-authored both studies.

The research indicates that first responders who spent lengthy amounts of time in lower Manhattan in the aftermath of the Sept. 11, 2001 terror attacks, and who later developed post-traumatic stress disorder, are more likely to show neurological abnormalities and changes in their blood, similar to those seen in Alzheimer's disease patients and related dementias.

The studies also found that the brain "age" of a first responder showing signs of cognitive impairment appears to be about 7 to 10 years older than the normal population.

Dr. Benjamin Luft, director of the Stony Brook WTC Health and Wellness Program, said nearly 20 years after the World Trade Center attacks, doctors are seeing an increasing number of first responders showing signs of cognitive disorders and possible dementia.

"It is extremely unusual to have these types of abnormalities in people of this age," said Luft, the senior author on both studies, of the patients who at the beginning of the studies averaged 54 years old. "It is unheard of really, or extremely rare, to find these types of abnormalities in the general population."

An estimated 500,000 people, including nearly 100,000 first responders, were potentially exposed to environmental contaminants in the aftermath of the terror attacks, with many later diagnosed with an array of cancers and respiratory diseases such as asthma, COPD and interstitial lung disease.

"The environmental exposures and psychological pressures experienced by responders during 9/11 and its aftermath have had an insidious effect on their health and well-being," Luft said.

The first Stony Brook study used MRI imaging to assess the brain matter of nearly 100 first responder patients with and without symptoms of cognitive impairment. The goal of the study, which will be published in "Alzheimer's and Dementia: Diagnosis, Assessment and Disease Monitoring," was to determine if midlife WTC first responders developed the neurodegenerative conditions due to changes in their brain connected to the toxic exposure at Ground Zero.

The second study, which will be published in "Translational Psychiatry," found that some first responders possess protein changes in their blood consistent with Alzheimer's disease. Among the 181 first

responders studied, researchers also observed a nearly threefold increase in the incidence of mild cognitive impairment among those also diagnosed with PTSD.

Both studies will be presented virtually Tuesday at the Alzheimer's Association International Conference.

Researchers first began to study the patients five years ago to determine if there was accelerated aging among WTC responders.

Imaging revealed that areas of the brain cortex — which is responsible for cognition — were thinning and had atrophied in many WTC patients significantly more than in members of the general population, the study found.

The cortical thickness reduction, Clouston said, is “a possible indicator of early stage dementia” for a portion of these first responders.

“We have a large population of people with memory problems in our cohort,” he said. “And what we found here is that people with the cognitive impairment had atrophy in their brains similar to Alzheimer's disease.”

But Clouston said patients need to be studied longer to determine how these changes, including the brain atrophy, will progress over time.

Michael Barasch, an attorney who represents 20,000 clients with 9/11-related illnesses, including more than 2,500 from Long Island, said the Stony Brook studies are not surprising.

“The numbers are overwhelming in the amount of family members who have been calling to tell me their husbands couldn't do anything anymore cognitively and couldn't remember anything,” said Barasch, managing partner at the law firm of Barasch McGarry. “I have absolutely seen this and it's absolutely heartbreaking.”

The studies, Barasch said, should prompt Congress to add cognitive-related illnesses and impairments to the list of 9/11-related ailments that are covered by the September 11th Victims Compensation Fund.

Researchers, Clouston said, will be looking for first responders willing to donate their brain after death to help determine which chemicals are responsible for the cognitive impairment.

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## **Newsday**

<https://www.newsday.com/long-island/nassau/shark-lido-beach-hempstead-1.47412817>

### **Three shark sightings close Long Beach ocean, force restrictions elsewhere**

By Matthew Chayes

July 28, 2020

**Shark!**

Local officials reported three shark sightings Monday in Hempstead-area waters on Long Island's South Shore, and they say it's the same one — likely a bull shark.

The sightings were at Long Beach, Point Lookout and Lido Beach West, officials said.

The ocean off Long Beach was closed indefinitely to public use after the second shark spotting in the water, while bathing resumed in the afternoon at Hempstead town beaches between Atlantic Beach and Jones Beach — but only knee-deep.

"This is a real, legitimate shark sighting," Town Supervisor Don Clavin said.

The first shark spotting on the scorching hot day was off the shore of Lido Beach West, leading to the closure of the strip, town spokesman Michael Caputo said.

That was the first sighting in four years, said Clavin, who said it was midmorning and 8 to 10 feet from the shore.

"It was pretty close, folks," he said at a midday news conference. "That is really close to the shoreline."

He said: "This was a sizable one, and it can do some damage in the wrong situation."

Clavin said that there were potentially two sharks in the area, and "it's a concern for residents' safety. That's what it comes down to."

The shark was spotted by a town lifeguard on a surfboard, Caputo said. The lifeguard described what he saw to town higher-ups, who concluded that the shark was likely a bull shark.



The ocean off Long Beach was closed indefinitely after a second shark spotting in the water. Credit: Newsday/John Keating

Long Beach tweeted at 2:16 p.m. that there had been a second sighting and said the ocean would be "closed until further notice." Long Beach spokesman John McNally confirmed the second sighting, near Riverside Boulevard, which he said was by a lifeguard.

Town of Hempstead officials reported the third sighting, near Point Lookout.

Greg Metzger, the chief field coordinator for the South Fork Natural History Museum who helps catch, identify and tag sharks for research, said bull sharks tend to be fairly large, up to 500 pounds. He said they like warm, shallow water; will scavenge and can also catch and kill their own prey; and are one of the few sharks that can live in fresh water.

Metzger said he believed the sharks spotted Monday probably weren't bull sharks, based on their biology and his experience tracking sharks.

"They're unlikely to be in New York waters. Period," he said. They tend to be in southern waters, the Carolinas and points south, he said.

He asked anyone who sees a shark to fill out a survey from the state Department of Environmental Conservation: <https://www.dec.ny.gov/animals/117460.html>.

Metzger said the likelihood of a human being attacked by a shark is "literally almost zero." He cited statistics from the International Shark Attack File, kept in Florida, that there were 12 or 13 bites or scrapes by sharks in New York State in the 100 or more years records have been kept.

Mike Romano, the town's chief ocean lifeguard, said at the news conference that the lifeguard was out in the water and saw a shadow beneath him and determined it was a shark based on characteristics like its shape and dorsal fin.

The beaches were open in the town, but swimming was limited to knee deep, a restriction that was being periodically reevaluated based on risk. Patrols including the Coast Guard and lifeguards were in the water and were to determine whether the danger had abated, he said.

Clavin noted that the beaches were already at limited capacity, due to restrictions imposed during the coronavirus pandemic.

On Sunday, there was a sighting of two thresher sharks swimming together at Robert Moses State Park, according to George Gorman, regional director of the state Parks Department.

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## **E&E News PM**

[https://www.eenews.net/eenewspm/2020/07/28/stories/1063645669?utm\\_medium=email&utm\\_source=eenews%3Aeenewspm&utm\\_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D](https://www.eenews.net/eenewspm/2020/07/28/stories/1063645669?utm_medium=email&utm_source=eenews%3Aeenewspm&utm_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D)

### **FDA issues warning on toxic hand sanitizers**

Ariana Figueroa

July 28, 2020



A person using hand sanitizer. Trinity Care Foundation/Flickr



The Food and Drug Administration has issued a warning for toxic hand sanitizers that can cause blindness, damage to the nervous system and even death.

The agency announced yesterday that it has found fraudulent hand sanitizer claiming to contain ethanol but instead containing methanol, or wood alcohol, which is a toxic ingredient.

FDA says methanol, which is used to create fuel and antifreeze, can be toxic if it is absorbed through the skin and can be life-threatening if ingested. Exposure to methanol can cause a variety of problems including nausea, vomiting, headaches, blindness, seizures, damage to the nervous system or death.

The agency placed manufacturers of sanitizers using methanol on an "import alert."

FDA also sent a **letter** to a company based in Mexico — Eskbiochem SA de CV — after testing showed the hand sanitizer produced at the facility contained methanol. The agency also prevented the company's products from entering the United States.

"We remain extremely concerned about the potential serious risks of alcohol-based hand sanitizers containing methanol," FDA Commissioner Stephen Hahn said in a statement. "Producing, importing and distributing toxic hand sanitizers poses a serious threat to the public and will not be tolerated."

The coronavirus pandemic has strained the hand sanitizer supply chain, causing the industry to push for FDA to ease its restrictions on alcohols used to make the product (*Greenwire*, May 15).

Hahn said that if soap and water are not available, the next best thing to use is an alcohol-based hand sanitizer and to check the agency's "do-not-use" **list** of harmful hand sanitizer products.

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## **GreenWire**

[https://www.eenews.net/greenwire/2020/07/28/stories/1063644879?utm\\_medium=email&utm\\_source=eenews%3Agreenwire&utm\\_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D](https://www.eenews.net/greenwire/2020/07/28/stories/1063644879?utm_medium=email&utm_source=eenews%3Agreenwire&utm_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D)

## **Tropical storm warning issued for Puerto Rico, Caribbean**

July 28, 2020

Forecasters have issued a tropical storm warning for Puerto Rico and other parts of the Caribbean as officials expect a disturbance in the Atlantic to soon strengthen into a tropical storm.

The U.S. National Hurricane Center in Miami said this morning that warnings have been issued for Puerto Rico, the British and U.S. Virgin Islands, and numerous other islands, including Antigua, Barbuda, Martinique and Montserrat.

If it becomes a tropical storm, it would be named Isaias.

A tropical storm warning means that tropical storm conditions are expected somewhere within the warning area within 36 hours.

This morning, the system was centered 585 miles (940 kilometers) east-southeast of the Leeward Islands. It was moving west at 23 mph.

It is expected to move through the Leeward Islands tomorrow, and near or over the Virgin Islands and Puerto Rico tomorrow night. It would be over Hispaniola on Thursday.

The maximum sustained winds are 40 mph with higher gusts. Forecasters said some strengthening is expected during the next 48 hours, with the system expected to become a tropical storm tonight or tomorrow.

Forecasters estimated the northern Leeward Islands, British and U.S. Virgin Islands, and Puerto Rico would experience 3 to 6 inches of rainfall with maximum amounts of 10 inches. — *Associated Press*

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## **InsideEPA TSCA**

<https://insideepa.com/tscA-takes/federal-agencies-tap-nas-advice-pfas-research?s=eml>

### **Federal agencies tap NAS for advice on PFAS research**

July 27, 2020

EPA and a slate of other federal agencies have contracted with the National Academy of Sciences (NAS) to advise them on how to coordinate their research on human health risks posed by per- and polyfluoroalkyl substances (PFAS) after a furor in 2018 highlighted divisions among agencies on the substances' risks.

In a July 27 announcement, EPA said it has partnered with the departments of Defense (DOD), Agriculture and Health and Human Services (HHS) to engage NAS to organize a two-day virtual public workshop this fall "to review federal agency research on PFAS and identify research and data gaps."

EPA said that after the workshop, NAS will assemble a report summarizing the participants' views "on how to ensure that the federal research program for PFAS is robust and focused on addressing the highest priority human health concerns."

The proceedings will be made available to participating federal agencies and to the public once it is completed.

"EPA is working across the federal family to ensure that our research on the potential health concerns associated with PFAS is properly coordinated, complementary, and avoids unnecessary duplication," EPA Administrator Andrew Wheeler said in a statement. "This workshop will highlight the depth of PFAS research across the federal government and identify data gaps."

Such efforts appear aimed in part at addressing concerns that federal agencies were not aligned in their views when it came to health risks posed by PFAS. For example, in 2018, EPA and DOD temporarily blocked release of a draft toxicological profile by the Agency for Toxic Substances and Disease Registry (ATSDR) that showed several PFAS posed significantly greater risks than EPA assumed when it crafted health advisory levels for the substances in drinking water.

In the wake of the controversy that followed disclosure of the actions, ATSDR's then-director said that agencies were developing "consistent messaging" before releasing the delayed draft profile.

And EPA's PFAS Action Plan, which was also released in 2018, indicated that EPA planned to work with several agencies "on PFAS-related research," such as on toxicology studies of a broad number of PFAS with the National Institute of Environmental Health Sciences (NIEHS) and National Toxicology Program (NTP).

EPA's plan also said it would work with other agencies, such as the Food and Drug Administration (FDA), USDA and DOD to limit exposures in various media.

In EPA's statement, federal officials said the upcoming NAS workshop will help ensure federal agencies agree on risks posed by PFAS.

The workshop is an effort to unify the research going on across federal agencies that will allow data gaps on PFAS to be determined and remedied, wrote Jordan Gillis, assistant defense secretary for sustainment and the chair of DOD's PFAS task force.

"Similar to other agencies within the federal family, understanding the health effects of exposures to PFAS continues to be a priority for [CDC] and [ATSDR]," added Dr. Robert Redfield, director of the Centers for Disease Control and Prevention and current administrator of ATSDR, "This virtual workshop with the National Academies is a welcomed opportunity to discuss and contribute to the growing body of knowledge on this topic."

EPA's statement notes that agencies are currently studying "PFAS chemistries, sample collection, compound identification and quantification, toxicities (including health effects in humans), fate and transport, occurrence and exposure, environmental removal and degradation, and treatment and disposal."

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## **InsideEPA.Com**

<https://insideepa.com/daily-news/new-york-asks-dc-circuit-quickly-implement-ozone-transport-ruling?s=eml>

### **New York Asks D.C. Circuit To Quickly Implement Ozone Transport Ruling**

July 27, 2020

New York, New Jersey and environmentalists are urging the U.S. Court of Appeals for the District of Columbia Circuit to quickly implement its July 14 ruling scrapping and remanding EPA's denial of New York's petition for direct federal controls on hundreds of upwind air pollution sources.

In a [joint July 24 filing](#) in *State of New York, et al. v. EPA*, the two states and New York City, backed by the Adirondack Council, Environmental Defense Fund and Sierra Club ask the court to issue its mandate by Aug. 4, due to their concerns that EPA will try to drag out implementation of the court's ruling through a lengthy process to petition the court for rehearing of the unanimous decision.

"Withholding the mandate for the full rehearing petition period of 45 days plus 7 days, could postpone the vacatur and remand of the Denial until September 4, 2020, at the earliest, and further delay EPA's action" on New York's petition, the states and environmentalists write.

New York's petition [sought direct controls](#) on some 350 pollution sources in other states upwind. The state filed the petition under Clean Air Act section 126, which allows states to petition for such regulation where they can demonstrate that a source or group of sources in another state contributes "significantly" to their problems

attaining or maintaining national ambient air quality standards (NAAQS). Section 126 is a similar provision to the air law's "good neighbor" provision, which requires states in their plans for air law implementation to mitigate their "significant contribution" to other states' problems meeting NAAQS.

"EPA's delay and unlawful Denial have denied New York relief to which it is entitled under section 126(b) for more than two years," the states and groups say.

"Moreover, EPA's unlawful actions have effectively denied the New York-Northern New Jersey-Long Island, NY-NJ-CT Nonattainment Area (New York Metropolitan Area) any additional relief for the 2018, 2019, and 2020 ozone seasons -- the three years that will be used to determine whether this multi-state nonattainment area will attain the 2008 ozone national ambient air quality standards (2008 ozone standard) by its July 2021 deadline," the filing says.

The George W. Bush EPA set the 2008 ozone NAAQS at 75 parts per billion (ppb), and the Obama EPA tightened the standard to 70 ppb in 2015. The Trump administration earlier this month proposed to retain the 2015 limit in its Clean Air Act-mandated five-year review of the NAAQS.

In their D.C. Circuit filing, the groups indicate that EPA and industry groups backing the agency in the litigation oppose the expedited issuance of the mandate. The agency says it needs more time to decide whether to ask the court for rehearing

### **Interstate Challenges**

The battle over New York's section 126 petition forms part of broader conflict between Northeast states and the agency over interstate ozone pollution that affects the region, with the Empire State, New Jersey and environmentalists in separate district court actions trying to force EPA to respond to the D.C. Circuit's 2019 remand of the Cross-State Air Pollution Rule (CSAPR) emissions trading program.

The court in *Wisconsin v. EPA* remanded EPA's 2016 "update" to CSAPR because it failed to ensure attainment of NAAQS by applicable deadlines. The district court suits seek binding deadlines for issuance of revised state plans setting tougher state emissions caps.

The court also in 2019 in another suit styled *New York v. EPA* scrapped outright the Trump EPA's CSAPR "close out" rule that found states need do no more than comply with existing emissions caps to attain the 2008 NAAQS. In that case, the court found that under the *Wisconsin* precedent, EPA cannot base its interstate pollution rules on projections of NAAQS attainment beyond attainment deadlines.

The court then in its July 14 ruling at issue in the instant case, *New York v. EPA*, invoked the same logic to reject EPA's denial of New York's section 126 petition, and further faulted EPA for failing to state clearly what criteria New York must meet in order for EPA to approve its petition. -- *Stuart*

*Parker* ([sparker@iwpnews.com](mailto:sparker@iwpnews.com))

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### **Newsday (Op-Ed)**

<https://www.newsday.com/opinion/editorial/plume-long-island-environmental-pollution-brookhaven-grumman-navy-bnl-1.47424763>

### **Plume needs BNL treatment**

By The Editorial Board

July 27, 2020



Call it a tale of two plumes, a lesson in science, or a parable of corporate intransigence. Whatever the headline, the picture now is clear. The approach taken by Northrop Grumman and the U.S. Navy to containing the Grumman plume has been a failure. The proof lies just 35 miles to the east at Brookhaven National Lab, where a similar plume with similar chemicals posing similar threats to Long Island's aquifer is shrinking, not expanding.

A Newsday report by Paul LaRocco and David M. Schwartz makes clear in words and graphics that the "pump-and-treat" method used for more than 20 years at BNL has succeeded with that plume expected to be eradicated by 2070. But Northrop Grumman and the Navy — whose Bethpage plume was named a state Superfund site in 1983, six years before BNL's designation — continue to resist a \$585 million state plan to use a pump-and-treat system of 24 wells to remove toxic water from the aquifer, clean it, and return it to the ground.

The obstinance is wrongheaded, and baffling. Pump-and-treat has a long history of success. Remediation preferred by Grumman and the Navy has not stopped the disturbing one-foot-a-day spread of the plume toward the Great South Bay. It's time they dropped their opposition to the kind of pump-and-treat plan the Bethpage Water District called for in 1990. The state says it will do the work and bill Grumman and the Navy later, and it should, but it would be far better if Grumman and the Navy joined the fight now.

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## NATIONAL

### **E.P.A. Inspector General to Investigate Trump's Biggest Climate Rollback**

<https://www.nytimes.com/2020/07/27/climate/trump-fuel-efficiency-rule.html>

The agency's watchdog office said Monday it would investigate whether the reversal of Obama-era fuel efficiency standards violated government rules.

By [Coral Davenport](#) and [Lisa Friedman](#)

July 27, 2020

WASHINGTON — The Environmental Protection Agency’s internal watchdog said Monday it had opened an investigation into the agency’s weakening of Obama-era regulations that would have limited automobile emissions by significantly raising fuel economy standards.

The inspector general demanded that top E.P.A. officials turn over briefing materials and other documents pertaining to the regulation, which was finalized in late March as the Trump administration’s single largest rollback of federal climate change rules.

Auditors said they intended to investigate whether the Trump administration acted “consistent with requirements, including those pertaining to transparency, record-keeping, and docketing, and followed the E.P.A.’s process for developing final regulatory actions.”

The yearlong effort to write the Trump administration rule was plagued with controversy. Just weeks before the final rule was published, the administration’s own internal analyses showed that it would create a higher cost for consumers than leaving the Obama-era standard in place and would contribute to more deaths associated with lung disease by releasing more pollution into the air.

“This is really serious,” said Vickie Patton, general counsel for the Environmental Defense Fund. “It’s rare for E.P.A.’s inspector general to conduct an investigation of the agency’s rule-making.”

Multiple outside economists and public health experts have questioned the administration’s justification of the rule, saying its calculations do not stand up to rigorous independent analysis and calling on the administration to make public the formulas and economic models used to reach its conclusions.

James Hewitt, an E.P.A. spokesman, said in a statement that the agency “will respond” to the inspector general “through the appropriate channels” and defended the new rule as “a sensible, single national program that strikes the right regulatory balance, protects our environment, and sets reasonable targets for the auto industry.”

The audit cites documents obtained and provided to investigators by Senator Tom Carper of Delaware, the ranking Democrat on the Environment and Public Works Committee.

Senator Carper said the documents showed that the Department of Transportation wrote the bulk of the draft rule submitted to the White House for review, and that E.P.A. career staff members had complained in writing that they were shut out of the process. They also pointed to numerous errors in the rule.

The E.P.A. then “purposefully and potentially illegally withheld these documents from being placed into the rule-making docket,” Senator Carper said in a May letter, and later made changes to the final rule after it was signed and before it was published in the federal register.

In a statement, Senator Carper said the documents his office had obtained and turned over to the inspector general’s office “demonstrate significant irregularities and illegalities” in the rule-making process.

He called the rollback “the product of the most procedurally problematic process my office has ever reviewed.”

The new rules require fuel economy standards to rise by about 1.5 percent a year, compared to the 5 percent annual increase required by the Obama rule. That would allow cars to emit nearly a billion tons more carbon dioxide over the lifetime of the vehicles covered by the rule than they would have under the Obama standards.

The Trump administration said the new rules would cut the future price of new vehicles by around \$1,000 and reduce traffic deaths, a finding environmental and consumer groups dispute.

A former Trump administration official acknowledged that political appointees working on the rule had rushed to complete it before April, fearing that, if it was published later this year, it could be quickly overturned in 2021, should former Vice President Joseph R. Biden Jr. win the White House.

Trump administration officials were acutely aware that a Biden administration could use a law called the Congressional Review Act, which says that any regulation finalized within 60 legislative days of the end of a

presidential term can be overturned with a simple congressional vote that is not subject to filibuster or any other Senate rules to slow it down.

“It was openly discussed: If you don’t get something done by the end of April, it’s exposed to being overturned by the C.R.A.,” said Michael McKenna, a former White House liaison to Congress. “Everybody thought of the SAFE rule as priority No. 1,” he said, referring to the administration’s acronym for the rollback of the emissions standard.

“They rushed to get it done,” he added

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## **EPA Watchdog To Probe Trump's Vehicle Emissions Changes**

<https://www.law360.com/articles/1295884/epa-watchdog-to-probe-trump-s-vehicle-emissions-changes>

By Mike LaSusa

Law360 (July 27, 2020, 11:26 PM EDT) -- The internal watchdog arm of the U.S. Environmental Protection Agency is launching a probe into the Trump administration's rollback of Obama-era greenhouse gas emissions and fuel economy standards for vehicles made from 2021 to 2026, the unit announced Monday.

The EPA's Office of Inspector General sent a letter on Monday to the heads of the environmental regulator's policy office as well as its air and radiation office, notifying those departments of the evaluation and requesting records related to the second half of the Safer Affordable Fuel-Efficient Vehicles rule, which was finalized in March.

"The OIG's objective for this evaluation is to determine whether the EPA's actions on the final SAFE Vehicles Rule Part 2 were consistent with requirements, including those pertaining to transparency, record-keeping, and docketing, and followed the EPA's process for developing final regulatory actions," the watchdog said.

The second half of the SAFE Vehicles rule calls for a 1.5% annual increase in the stringency of GHG and Corporate Average Fuel Economy, or CAFE, standards for cars and light trucks, as opposed to the 5% annual increase called for in the Obama-era rule enacted in 2012. The administration originally proposed freezing the Obama-era standards, which they claimed were no longer feasible for automakers to meet.

The inspector general's office said in its letter on Monday that a member of Congress in May had "identified a number of potential irregularities surrounding the promulgation of the regulation and requested that we examine these potential irregularities in more depth."

The first half of the SAFE Vehicles rule, the so-called One National Program rule finalized in September, yanked California's Clean Air Act waiver to set its own vehicle GHG standards while asserting that the Energy Policy and Conservation Act gives the U.S. Department of Transportation the right to set national fuel economy standards and preempts similar state programs.

A California-led coalition recently told the D.C. Circuit that the federal government overreached when it departed from long-standing practice and rescinded the Clean Air Act waiver.

About two dozen states and several major cities, including Los Angeles and New York City, joined environmental and public health groups in telling the appeals court last month that the EPA and DOT can't withdraw California's authority to set its own emissions standards that pushed automakers to build cleaner cars.

The coalition was joined by companies and industry interest groups like the National Coalition for Advanced Transportation, which said their investments relied on California's rule pushing more electric vehicle demand.

California has long suffered from air pollution issues, which is why Congress has allowed it to set rules that are more strict than those established by the federal government, according to the filing. Those state regulations were backed up by Congress, which set up a system that forced the EPA to let California and no other state set vehicle standards, according to the brief. Some states have chosen to adopt California's standards, and that shouldn't be prevented, either, the coalition said.

--Additional reporting by Michael Phillis, Keith Goldberg and Juan Carlos Rodriguez. Editing by Emily Kokoll.

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## **The Shape of Water After County of Maui v. Hawaii Wildlife Fund**

<https://www.theregreview.org/2020/07/28/camacho-kelly-shape-water-after-county-maui/>

Alejandro E. Camacho and Melissa Kelly

One day after Earth Day's 50th anniversary, environmentalists had more than just the holiday to celebrate. Instead of gutting the Clean Water Act as many had feared, the U.S. Supreme Court handed down a surprisingly measured decision in County of Maui v. Hawaii Wildlife Fund, largely preserving the jurisdictional reach of the iconic law.

Yet in the wake of the decision, the courts and the U.S. Environmental Protection Agency (EPA) will almost certainly continue their decades-long interpretive tussle.

At issue in County of Maui was the scope of the Clean Water Act's authority over discharges conveyed to navigable waters through groundwater rather than directly through a "point source," such as a pipe, channel, or some other discrete conveyance. In a 6-3 decision, the Court held that the law requires a permit for a discharge through groundwater if it is the "functional equivalent" of a direct discharge from a point source. Notably, the majority included two of the Court's conservative justices.

This decision came in what some deemed the Clean Water Act "case of the century."

For over 30 years, the County of Maui's wastewater treatment plant had been discharging approximately four million gallons per day of partially treated sewage through wells into groundwater that carried the sewage to the ocean. Due, in part, to this polluted groundwater discharge, a U.S. Geological Survey study found that coral reefs in the area were degrading at an accelerated pace.

In 2012, environmental groups brought a citizen lawsuit against the county for discharging pollutants into navigable waters without a Clean Water Act permit. Although the federal district court and U.S. Court of Appeals for the Ninth Circuit ruled in favor of the environmental groups, the Supreme Court granted the county's petition for review, raising concerns that the Court's conservative wing might further restrict the law's protections.

The parties did not dispute that the county was pumping partially treated sewage into groundwater through a point source—the wells—and that this partially treated sewage reached a navigable water—the Pacific Ocean. The only question before the Court was whether the Clean Water Act requires a permit for this type of discharge.

In answering this question, the Supreme Court affirmed the lower courts' decisions. The Court, however, rejected the Ninth Circuit's proposed test—that the Clean Water Act requires a permit when "pollutants are fairly traceable from the point source to a navigable water," as well as the tests put forward by those on both sides of this case.



Instead, the Court fashioned its own “functional equivalent” test, articulating several potentially relevant factors to consider when determining what constitutes a functional equivalent of a direct discharge. Although the Court stated that transit time and distance traveled will be the most important factors in most cases, it emphasized that the specific facts of a given case would determine the relevance and relative weight of each factor. This test is probably the most expansive interpretation that one could reasonably expect given the Court’s current composition.

Predictably, some business interests have reportedly complained that this case-by-case approach and the absence of a bright line rule will be “devastating” for industry. But the Court’s decision is a moderate approach, one that is consistent with past judicial and EPA interpretations of the Clean Water Act’s scope and unlikely to result in significant increases in litigation.

As noted in the pivotal Supreme Court decision *Rapanos v. United States* and restated in *County of Maui*, narrow readings favored by industry—such as the county’s proposed means-of-delivery test—are not consistent with the expansive language of the Clean Water Act, which prohibits “any addition of any pollutant to navigable waters.”

Furthermore, contrary to the position the Solicitor General adopted in its brief to the Supreme Court, EPA had consistently posited for decades that groundwater as a conveyance can be regulated under the Clean Water Act. EPA endorsed this interpretation until the current Administration issued an interpretive statement last year, which, unsurprisingly, was consistent with President Donald J. Trump’s broader agenda to eviscerate EPA’s authority.

In fact, earlier in this case, EPA filed a brief stating that “EPA’s longstanding position is that a discharge from a point source to jurisdictional surface waters that moves through groundwater with a direct hydrological connection comes under the purview of the Clean Water Act’s permitting requirements.” EPA cited rulemakings dating back to 1990 to support its assertion.

Although future cases undoubtedly will further clarify the parameters of the functional equivalent test, the Court has provided important guideposts.

First, in rejecting the tests offered by both parties, the Court made clear that mere traceability—only requiring that a pollutant can be traced from a point source to a navigable water—is too broad. This standard is over-encompassing even if the test requires that the initial discharge of pollutants is the proximate cause of the addition of pollutants to a navigable water.

On the other hand, the Court also rejected the county’s proposed “means-of-delivery” test, making clear that discharges can meet the functional equivalent test even if the point source itself is not the means of delivery to the navigable water, as was the case in *County of Maui*.

Second, the Court offered two hypotheticals to help define the upper and lower bounds of the test. At one end is a discharge from a pipe that travels a few feet through groundwater before reaching a navigable water, which would require a permit. At the other end is a discharge from a pipe that travels 50 miles through groundwater, mixes with other materials, and only reaches a navigable water after many years. In this circumstance, a permit would not likely be required.

Third, the Court’s opinion emphasized overarching principles that should guide lower courts in applying the functional equivalent test. The Court stressed the importance of advancing congressional intent and underlying statutory objectives, in particular, balancing the protection of waters of the United States (WOTUS) with the preservation of states’ regulatory authority over groundwater.

Finally, and refreshingly, the Court has grounded its test’s factors in scientific evidence.

*County of Maui*’s approach, with its emphasis on congressional intent and science-based evidence, should also shape the fate of the Trump Administration’s controversial WOTUS rule, published only two days before the Court’s decision. Most notably, the Administration’s changes to the EPA’s definition of what qualifies as a

protected water would exclude water bodies clearly included under the Court's interpretation of protected waters as delineated in County of Maui.

Despite County of Maui, exactly how far the protections afforded by the Clean Water Act will reach remains uncertain. For the immediate future, whatever EPA guidance emerges will depend on the inclination of its Administrator, Andrew Wheeler, a former coal lobbyist. If a new administration does not take over in 2021, EPA's latest revision to the WOTUS rule will undoubtedly make its way through the courts and possibly into the hands of a conservative-leaning Supreme Court.

As with many events around the globe, much of the future of the federal water policy hinges on what transpires at the ballot box this November.

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### **EDF Cites SCC Court Ruling In Late Push Against EPA Methane Rollbacks**

<https://insideepa.com/daily-news/edf-cites-scc-court-ruling-late-push-against-epa-methane-rollbacks>

July 27, 2020

Environmentalists are seizing on a recent court ruling that faults the Trump administration's scaled-back "interim" estimates of the cost of climate damages to bolster their arguments that EPA's soon-to-be-completed rollback of methane limits on new oil and gas facilities is unlawful.

The new claims surface in supplemental comments from Environmental Defense Fund (EDF), part of late-hour advocacy by various groups to the White House Office of Management & Budget (OMB) over two proposed oil and gas deregulatory rules that EPA is advancing in part to derail states' litigation seeking to force existing source controls.

"[A]dditional information has become available that underscores the unlawfulness of EPA's proposals," says EDF's July 21 supplemental comments on two pending rules that would overhaul the 2016 oil and gas new source performance standards (NSPS).

The first proposal would soften leak detection and repair requirements in the NSPS, while a broader "review" of the policy would scrap direct methane controls and remove all NSPS requirements from the transmission and storage sub-sector. Scrapping the methane curbs would remove a key legal predicate under section 111 of the Clean Air Act for regulating existing oil and gas emissions sources.

EDF is specifically citing two recent developments: a July 14 Government Accountability Office (GAO) report faulting the government's reliance on the Trump administration's "interim" estimates of the social cost of carbon (SCC) without plans to update them, and a July 15 ruling by Judge Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California also faulting the interim tool.

The administration's approach uses sharply reduced values of the climate damage caused an incremental ton of greenhouse gases, largely by attempting to focus only on domestic damages and by using higher discount rates.

The GAO report "further demonstrates the arbitrary and capricious nature of EPA's decision to utilize the 'interim domestic social cost of methane' in the oil and gas proposals," EDF says.

The court ruling, which vacated the Bureau of Land Management's (BLM) rescission of Obama-era methane "waste" rules for the oil and gas sector, "directly bears upon many of the issues in these rulemakings," the group adds, citing multiple flaws the court identified in the BLM rule and suggesting EPA's plans might have similar flaws.

GAO's report faulted the Trump administration for lacking a plan to update its interim SCC estimates that drastically scaled back the Obama administration's climate damage numbers developed by an interagency work group. The report's single recommendation is that OMB identify a federal entity responsible for updating the SCC in line with January 2017 recommendations from the National Academy of Sciences.

Rogers' ruling cited numerous problems with BLM's waste rule recission, including that the interim SCC metric that is "riddled with flaws," and ignores the "best available science." She also wrote that the Trump administration's promise to update its metric at some point "rings hollow," while also pushing back against the administration's reliance on domestic rather than global estimates of climate damages.

### **'Legal Risk'**

The ruling is not binding on other courts, but EDF's supplemental comments build on efforts by critics of EPA's methane rollbacks to argue the policies face fresh legal vulnerability.

For example, Jason Schwartz, legal director of New York University's Institute for Policy Integrity, told Inside EPA July 15: "I think all agencies -- EPA, [the National Highway Traffic Safety Administration], Interior, Energy -- should now be on notice that relying on the 'interim' SCC estimates puts their actions at legal risk."

Views of the court decision are still evolving, and Foley Hoag attorney Seth Jaffe in a recent blog post hedged about the broader effect of the ruling on the interim SCC issue. "I can certainly imagine conservative judges concluding that whether the U.S. government should care about the global, as opposed to domestic, cost of methane is more of a policy choice than a scientific question," he wrote.

But Jaffe added, "there's little doubt though, that this is not the last case in which courts are going to have to wrestle with this thorny problem."

Meanwhile, EPA has repeatedly told the courts in separate litigation by states and environmentalists seeking existing source methane rules that its pending oil and gas NSPS "review" rule will be completed by July 30.

But the agency also appeared to hedge in its most recent July 15 status update in that case, noting that deadline assumes "there are no additional interagency comments."

Some sources tracking the issue are suggesting that the timeline for the final rule might slip into the first or second week of August.

But advocacy around the oil and gas rules has been continuing at OMB, with industry and environmental groups in recent months making their pitches for or against both regulations well after the close of the public comment periods on both rules.

The last several weeks of such meetings have heavily focused on critics of the rollbacks.

The California Air Resources Board, for example, during its July 7 meeting with OMB called the current NSPS "cost effective, feasible and necessary." But CARB also urged that even if EPA removes transportation and storage from the NSPS source category, it should retain reporting requirements that exceed those under EPA's GHG reporting program.

Industry groups meeting with OMB in July include Shell on July 13 and Environmental Entrepreneurs (E2) on July 14. Shell has previously endorsed some scaling back of the Obama-era rules but also has publicly supported continuation of direct methane controls.

And E2, a network that includes clean energy entrepreneurs and investors, endorsed continuation of federal methane controls as beneficial to "businesses that develop, manufacture and implement" efficiency in the oil and gas sector.

At press time, it appears that July 24 meetings with Oxfam America and Conservation Colorado were the final stakeholder meetings on the OMB calendar. -- Doug Obey ([dobey@iwpnews.com](mailto:dobey@iwpnews.com))

## **EPA watchdog to probe rollback**

<https://www.eenews.net/eenewspn/stories/1063639891/search?keyword=epa>

Maxine Joselow, E&E News reporter

Published: Monday, July 27, 2020

*This story was updated at 5:06 p.m. EDT.*

EPA's internal watchdog plans to examine the agency's rollback of clean car standards.

In a project notification released this afternoon, EPA's Office of Inspector General said it "plans to begin an evaluation" of the rollback, which is formally known as the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule.

Such an investigation was requested by Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee.

In a February letter to EPA Inspector General Sean O'Donnell, Carper wrote that EPA career staff had raised serious concerns about the rollback (Greenwire, March 2).

Under Section 307 of the Clean Air Act, EPA political appointees are supposed to send those concerns to the White House Office of Information and Regulatory Affairs, which is supposed to include them in the publicly available rulemaking docket.

But according to Carper, EPA political appointees have tried to hide the concerns from the public by neglecting to send them to OIRA, potentially violating the Clean Air Act and other rulemaking requirements.

In a subsequent May letter, Carper and House Energy and Commerce Chairman Frank Pallone (D-N.J.) added that EPA Administrator Andrew Wheeler had made "dubious defenses" of the rollback that contradicted the findings of EPA career staff.

Today's project notification does not mention Carper by name, although it notes that "a member of Congress identified a number of potential irregularities surrounding the promulgation of the regulation and requested that we examine these potential irregularities in more depth."

It adds: "The OIG's objective for this evaluation is to determine whether the EPA's actions on the final SAFE Vehicles Rule Part 2 were consistent with requirements, including those pertaining to transparency, record-keeping, and docketing, and followed the EPA's process for developing final regulatory actions."

The project notification was written and signed by Patrick Gilbride, director of EPA's environmental research program evaluations. It was addressed to Brittany Bolen, associate administrator in EPA's Office of Policy, and Anne Idsal, principal deputy assistant administrator in EPA's Office of Air and Radiation.

Gilbride asked Bolen and Idsal to provide several records to the OIG by Aug. 10, including EPA staffers' written comments on the draft version of the SAFE Vehicles Rule.

The second part of the rule was finalized in late March (Greenwire, March 31). It requires automakers to increase the fuel efficiency of their light-duty vehicles by 1.5% each year, rather than the 5% annual increases mandated by President Obama.

The first part of the rollback, finalized in September, would block California from setting tougher tailpipe pollution rules than those of the federal government. Both parts are subject to numerous lawsuits from environmental groups and blue states.

Asked for comment, Carper said in an email to E&E News: "I'm pleased that the EPA Inspector General is opening an investigation into this rule, which was the product of the most procedurally problematic process my office has ever reviewed. If the EPA IG follows the facts, I have no doubt they will find that the Trump Administration failed to follow the law."

EPA spokesman James Hewitt said in an email to E&E News: "EPA will respond to the OIG through the appropriate channels. As finalized, the SAFE Vehicles Rule provides a sensible, single national program that strikes the right regulatory balance, protects our environment, and sets reasonable targets for the auto industry, while supporting our economy and the safety of American families."

*Reporter Kevin Bogardus contributed.*

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## **Durbin questions Wheeler on agency reopening plans**

<https://www.eenews.net/eedaily/stories/1063640675/search?keyword=epa>

Kevin Bogardus, E&E News reporter

Published: Tuesday, July 28, 2020

A senior Senate Democrat is requesting more information about EPA's reopening plans during the COVID-19 pandemic, stressing that staff and their families must be safe.

"I ask that the EPA — whose very mission is to protect human health — works to ensure that any effort to reopen facilities will be done so at an appropriate time, based on scientific data, and will incorporate a clear and comprehensive operations plan to protect employees and their families," Minority Whip Dick Durbin (D-Ill.) wrote yesterday in a letter to Administrator Andrew Wheeler.

Durbin said EPA's workforce has to deal with the virus, too, noting that more than 140,000 Americans have died, including one EPA staffer (Greenwire, April 2).

He also asked that Wheeler consider the use of public transit by staff as well as social distancing and cleaning protocols when reopening EPA offices.

"I urge you to detail how the safety of your employees and their families, based on scientific data, is addressed, as well as how any cleaning and social distancing protocols will be implemented," Durbin said. "The employees of your agency are counting on it."

Asked for a response to Durbin's letter, EPA spokesman James Hewitt told E&E News, "We will respond through the proper channels. However, all EPA facilities are evaluated weekly using data from the CDC and other expert sources. This data is also reviewed by EPA scientific experts."

Hewitt added, "These reviews, along with consideration of the status of the state and local reopenings, informs each decision. Any reopening will be phased in a measured and deliberate approach and transparent with all employees through our new dashboard service."

Overall, 59 federal and nonfederal employees at EPA have tested positive for COVID-19 while one employee has died from the virus, Hewitt said.

The Department of Labor's inspector general estimated that 6,000 federal employees will file workers' compensation claims related to contracting COVID-19 through Aug. 4, according to a report released earlier this month. The Division of Federal Employees' Compensation had received 2,866 such claims by June 16.

EPA employees have been teleworking since March as the pandemic took hold in the United States. Wheeler announced in May that the agency would begin to reopen, starting with several regional offices.

Agency officials have stressed that EPA's reopening will be done slowly in a phased approach that incorporates telework and ensures the staff's safety. Unions at the agency have protested the move, saying employees are teleworking effectively and should remain home to avoid exposure to the virus.

EPA has recently released guidance for phase three of its reopening, when most staff will be expected to return to the office. Still, some staff members can remain teleworking under certain conditions during that final phase of the process.

But as COVID-19 cases rise across the country, many of EPA's facilities remain in phase 1. Hewitt with EPA said the agency's headquarters and all of its regional offices — except Region 6, based in Dallas, and Region 9, based in San Francisco — are in phase 1.

Associate Deputy Administrator Doug Benevento told employees in an internal email obtained by E&E News that EPA did not make any changes in the reopening status of any of its facilities.

Benevento also said in his email sent Friday, "There were several locations where local public health agencies are allowing the state or local area to progress in reopening and where the gating criteria are also progressing. These locations include Headquarters [in Washington, D.C.], Boston, New York, Philadelphia, Denver and several smaller locations.

"Out of an abundance of caution, the Administrator and I have decided to hold all facilities in their current status this week at these facilities. We will continue to monitor all our locations and as we see progression locations will be moved to the next phase."

Benevento also reminded staff that if an EPA office moves into phase two of the reopening process, telework is available to employees "with supervisory notification."

Local officials in some of the places Benevento named in his email have recently sought to restrict businesses again and stressed telework to stop spread of the virus.

Pennsylvania Gov. Tom Wolf (D) issued an order effective July 16 that said "unless not possible, all businesses are required to conduct their operations in whole or in part remotely through individual teleworking." Wolf signed the measure in response to the rise in COVID-19 cases.

Last week, District of Columbia Mayor Muriel Bowser issued a mask order and extended the city's state of emergency due to the pandemic through Oct. 9.

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## **EPA Changes Policy for Low-Performing Staff, Drawing Union Ire**

<https://news.bloomberglaw.com/environment-and-energy/epa-changes-policy-for-low-performing-staff-drawing-union-ire?context=search&index=4>

Reporter: Stephen Lee

July 27, 2020, 6:06 PM

- EPA employees say change is punitive and 'a mistake'

- Agency says changes match up with White House orders

The EPA has changed the way it deals with low-performing employees, according to an internal email obtained by Bloomberg Law, sparking criticism from the union representing agency workers.

Under the new plan, the Environmental Protection Agency has eliminated a preliminary step called a performance action plan that preceded a more formal performance improvement plan, according to the email.

“If management is really interested in helping employees improve their performance, they will give them a maximum amount of time to do that,” said Nicole Cantello, an EPA attorney in Region 5 and president of the American Federation of Government Employees Local 704 in Chicago. “That’s what performance action plans did. Getting rid of them is just a mistake, because they would give you many opportunities to improve your performance.”

The email didn’t specifically describe how the process would work. But an EPA employee who declined to be identified said it means managers can now move low-performing staffers directly into a performance improvement plan, without giving them the benefit of a first chance at improvement.

A performance improvement plan lays out specific actions the employee must complete to avoid being removed or demoted. An employee on such a plan generally has 30 days to improve his or her performance, according to the EPA email.

The staffer said the change is “going to cause confusion and more concern about the safety of our jobs.” But if the change makes it easier to “get rid of employees who aren’t working, there could be some benefit for those of us who do work,” the staffer added.

## **2018 Executive Order**

An EPA spokeswoman said the changes were made in accordance with a May 2018 executive order, which states that “no agency shall generally afford an employee more than 30 calendar days to demonstrate acceptable performance.”

The EPA email also said the agency has collapsed its employee rating system from five tiers to three. The names of the tiers weren’t listed, but Cantello said they designate different levels of performance, ranging broadly from excellent to poor.

The EPA spokeswoman said the performance appraisal system was changed to meet the requirements of an April 2017 directive from the White House Office of Management and Budget, which “required the agency to review the performance management system and remove steps not required by statute or regulation.”

The EPA is coordinating a training plan to inform employees of the changes, let them ask questions, and “begin to establish a comfort level with the new system to increase morale,” she said.

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## **Environmental Justice Leaders Hail \$17 Million in House Bill**

<https://news.bloomberglaw.com/environment-and-energy/environmental-justice-leaders-hail-17-million-in-house-bill?context=search&index=2>

July 28, 2020, 6:00 AM

Reporters: Stephen Lee & Kellie Lunney

- Bill still needs to go through Senate
- EJ leaders applaud funding

Funding for the EPA's environmental justice program would nearly double under the House-passed spending bill, heartening community leaders who say the funding is badly needed.

The House on Friday passed a minibuss (H.R. 7608) that includes \$17 million overall for environmental justice programs at the Environmental Protection Agency. That's a significant boost from the \$9.55 million provided in the fiscal 2020 enacted budget for environmental justice activities.

The underlying Interior-Environment bill contained \$15 million for EPA's Office of Environmental Justice to enact the EJ 2020 Action Agenda. A Democratic amendment to the minibuss added another \$2 million for environmental justice programs at EPA for a total of \$17 million.

The Senate hasn't yet marked up any of its fiscal 2021 spending bills. Sen. Tom Udall (N.M.), top Democrat on the Senate Appropriations subcommittee that funds the EPA, expressed hope that lawmakers "will continue making progress" on boosting environmental justice funding.

"I will continue to fight for these investments—and investments across the EPA to address environmental disparities—in the Senate," Udall said.

But a spokeswoman for Sen. Lisa Murkowski (R-Alaska), who chairs the subcommittee, was noncommittal about the EJ funding level's prospects.

"Senator Murkowski appreciates the work of the House on their bill and their priorities, but will continue working closely with her Senate colleagues on the FY21 Senate Interior-Environment Appropriations Subcommittee bill. Details on what may or may not be in the bill will be released once there is a markup," spokeswoman Karina Borger said.

The White House has threatened to veto H.R. 7608 if it reaches President Donald Trump in its current form, but didn't mention the EJ funding.

## **Compliance Reviews**

The EPA's Office of Inspector General recently said the agency has "taken several actions over the past couple of years that threaten to reverse course on its prior environmental justice efforts."

The agency's budget for environmental justice activities has dropped sharply since 2017, the OIG said. In fiscal years 2017 and 2018, the Trump administration proposed zeroing out the program altogether, according to the OIG.

The House's money is meant to help the EPA perform more compliance reviews and enforcement in at least 100 of the nation's most overburdened communities, as well as to conduct cumulative risk assessments, according to a House news release.

Lawmakers also want the EPA to develop a definition for disproportionately exposed communities, consider racial inequities and the large disparities in coronavirus deaths seen in communities of color, and consider increasing the size and number of environmental justice grants it issues.

"As communities plagued by environmental injustice struggle through our nation's ongoing and intersecting racial justice, public health and climate crises, Congress can't afford to sit on the sidelines," said Rep. Donald McEachin (D-Va.), who offered the amendment along with Reps. Alma Adams (N.C.), House Natural Resources Chairman Raul Grijalva (Ariz.) and Diana DeGette (Colo.).

McEachin said the measure would "expand critical resources needed to address the pressing environmental and public health issues affecting underserved communities."



A Democratic spokesman for the House Appropriations Committee told Bloomberg Law in early July that, while the caucus does encourage more grants, “the bulk of the funding increase is intended to stay within the agency to help EPA carry out its EJ Action Agenda 2020.”

## **EJ Leaders Speak Out**

Environmental justice leaders hailed the proposed funding, and also laid out their own ideas about how the money could best be used.

One of the best uses for the new funding would be tougher EPA enforcement in low-income communities of color, Ana Baptista, board vice-chair at the New Jersey Environmental Justice Alliance, said.

That need is amplified by the Covid-19 pandemic, which could impose more emissions on overburdened communities from industries “who believe no one is watching,” said Baptista, who’s also a professor of environmental policy and sustainability at the New School.

The money could be used to prioritize rulemakings that mitigate the pollution burden in environmental justice communities, especially from the transportation sector, power plants, and industrial facilities, Baptista added.

“EJ communities need more targeted investments and protections, not less, right now,” she said.

Christine Appah, a senior staff attorney at New York Lawyers for the Public Interest, said the money would be well spent on bolstering the EPA’s Conflict Prevention and Resolution Center, which supports alternative dispute resolution to reach common ground between parties.

Directing the funds toward alternative dispute resolution would “help people get a faster means to realizing answers when a community is faced with an environmental threat,” Appah said.

Other environmental justice leaders agreed with the House’s strategy to keep the funding inside the EPA.

Eddie Bautista, executive director of the New York City Environmental Justice Alliance, said that, because the approved House funding is a relatively small amount that wouldn’t make much of an impact in nationally-distributed grants, “we may get more bang for the limited buck” by investing more in the EPA’s Office of Environmental Justice.

Similarly, Peggy Shepard, co-founder and executive director of WE ACT for Environmental Justice, said the funds should be used to help bulk up the EPA’s Office of Environmental Justice and turn it into a more robust, effective department.

One key step would be to hire a director at the department “who has the trust of environmental justice organizations,” Shepard said.

“Committing to advancing the recommendations of its own National Environmental Justice Advisory Council would be another step. As would issuing an annual report to Congress, explaining how these funds are spent,” she said.

But \$17 million still “falls short of the need,” Shepard said. In her view, the office needs at least \$20 million to fulfill its mission.

## **EPA Response**

An EPA spokeswoman said the agency “will work with the funds Congress appropriates to continue our environmental justice work.”

The agency “is strengthening environmental and public health protections for vulnerable, low-income, minority, tribal and indigenous communities—making measurable progress in improving outcomes for these Americans,” the spokeswoman said.

To illustrate, she pointed to “tools, technical assistance, grants, and meaningful engagement to economically distressed communities.” The agency’s environmental justice program currently has 34.9 full time equivalents, and the EPA ensures that at least one full-time, dedicated environmental justice coordinator is on duty in each of its 10 regions, the spokeswoman said.

—With assistance from Dean Scott.

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## **EPA Issues Final SNUR for LCPFAC and Perfluoroalkyl Sulfonate Chemical Substances**

<https://www.natlawreview.com/article/epa-issues-final-snur-lcpfac-and-perfluoroalkyl-sulfonate-chemical-substances>

Tuesday, July 28, 2020

ARTICLE BY:

[Government Regulation](#)

[Bergeson & Campbell, P.C.](#)

On July 27, 2020, the U.S. Environmental Protection Agency (EPA) promulgated a [final significant use rule \(SNUR\)](#) for long-chain perfluoroalkyl carboxylate (LCPFAC) and perfluoroalkyl sulfonate chemical substances. 85 Fed. Reg. 45109. EPA first [proposed a SNUR](#) for LCPFAC and perfluoroalkyl sulfonate chemical substances on January 21, 2015. 80 Fed. Reg. 2885. On March 3, 2020, EPA issued a [proposed supplemental SNUR](#) for LCPFAC chemical substances that would make inapplicable the exemption for persons who import a subset of LCPFAC chemical substances as part of surface coatings on articles. 85 Fed. Reg. 12479. The final SNUR requires persons to notify EPA at least 90 days before commencing the manufacture (including import) or processing of these chemical substances for the significant new uses described in the notice. The required significant new use notification initiates EPA’s evaluation of the conditions of use associated with the significant new use. Manufacturing (including import) or processing for the significant new use are prohibited from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination. EPA notes that as with any SNUR, the final rule excludes ongoing uses as ongoing uses cannot be subject to a SNUR. The final rule is effective on **September 25, 2020**.

EPA states that the March 2020 proposed supplemental SNUR was intended “to be responsive to the article consideration provision” at Section 5(a)(5) of the Toxic Substances Control Act (TSCA), which was added by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act). Section 5(a)(5) states that articles can be subject to notification requirements as a significant new use provided that EPA makes an affirmative finding in a rule that the reasonable potential for exposure to a chemical from an article or category of articles justifies notification. More information on the proposed supplemental SNUR is available in our February 28, 2020, memorandum, [“Proposed Supplemental SNUR Would Remove Exemption for LCPFAC Chemical Substances Used as Surface Coatings on Articles.”](#)

The final SNUR will require persons to notify EPA at least 90 days before commencing:

- The manufacturing (including importing) or processing of a subset of LCPFAC chemical substances for any use that was not ongoing after December 31, 2015;
- The manufacturing (including importing) or processing of all other LCPFAC chemical substances for which there were no ongoing uses as of January 21, 2015 (the date of the original proposed SNUR);
- The import of a subset of LCPFAC chemicals as part of a surface coating on articles; and
- The import of perfluoroalkyl sulfonate chemical substances as part of carpets.

The final SNUR will preclude the commencement of such manufacturing and processing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

According to the July 27, 2020, *Federal Register* notice, in an April 24, 1990, *Federal Register* notice, EPA “decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule.” Uses arising after publication of the proposed rule are distinguished from uses that exist at publication of the proposed rule. EPA states that the former would be new uses and the latter would be ongoing uses, except that uses that are ongoing as of the publication of the proposed rule would not be considered ongoing uses if they have ceased by the date of issuance of a final rule. EPA published the original proposed SNUR on January 21, 2015, and the proposed SNUR contains two significant new use dates. The first significant new use date is the date that the 2015 proposed rule was published and applies to: the manufacturing or processing of all LCPFAC chemical substances, other than those listed in the July 27, 2020, *Federal Register* notice; the import of articles containing a subset of LCPFAC chemical substances as part of a surface coating; and the import of perfluoroalkyl sulfonate chemical substances as part of carpets. The second significant new use date is December 31, 2015, for the manufacturing or processing of a subset of LCPFAC chemical substances, those listed in the July 27, 2020, *Federal Register* notice for any use. EPA states that the chemical substances listed correspond to the chemical substances that the principal manufacturers and processors of LCPFAC chemical substances participating in the 2010/2015 PFOA Stewardship Program agreed to phase out by the end of 2015.

In the March 3, 2020, supplemental proposed SNUR, EPA requested comment on whether it could adopt a *de minimis* threshold for determining “reasonable potential for exposure” and if so, how that *de minimis* threshold could be established. Additionally, EPA requested comment on whether it should include a safe harbor provision for importers of articles that can demonstrate their use was ongoing prior to the effective date of this rule. EPA states that it “appreciates the comments received,” but that the final SNUR does not include a *de minimis* threshold for determining “reasonable potential for exposure” or a safe harbor provision. EPA “will, however, continue to engage with interested stakeholders on these two issues.”

The final SNUR modifies the requirements for a subset of LCPFAC chemical substances in the existing SNUR at 40 C.F.R. Section 721.10536 by:

- Designating manufacturing (including importing) or processing of LCPFAC chemical substances listed in the list of LCPFAC chemical substances in the July 27, 2020, *Federal Register* notice for any use that was no longer ongoing after December 31, 2015, as a significant new use; and
- Designating manufacturing (including importing) or processing of perfluorooctanoic acid (PFOA) or its salts, which are considered LCPFAC chemical substances, and all other LCPFAC chemical substances for any use not ongoing as of January 21, 2015, the date on which the proposed SNUR was published, as a significant new use.

Based on comments on the SNUR, EPA recognized that certain of the LCPFAC chemical substances covered by the action have ongoing uses that cannot be designated as significant new uses. The chemical substances and associated uses that are not considered significant new uses are listed in the final rule at 40 C.F.R. Section 721.10536(b)(5). EPA states that it “will continue to work with industry to phase out LCPFAC, PFOA and its salts, and perfluoroalkyl sulfonate chemical substances and will review the need to promulgate future rules as necessary.”

For the final SNUR, EPA is also making the exemption at 40 C.F.R. Section 721.45(f) inapplicable for persons who import any of the listed LCPFAC chemicals and PFOA or its salts as part of a surface coating on articles based on EPA’s view that there is reasonable potential for exposure if these chemical substances are incorporated as surface coatings in articles and then imported. EPA notes that as it proposed in 2015, the article exemption still applies to LCPFAC chemical substances not listed or that are not PFOA or its salts, with the exception of the import of carpets, for which the import exemption is already inapplicable. The other provision of 40 C.F.R. Section 721.45(f), respecting processing a chemical substance as part of an article, remains applicable.

EPA notes that the term LCPFAC refers to the category of long-chain perfluorinated carboxylate chemical substances with perfluorinated carbon chain lengths equal to or greater than seven carbons and less than or equal to 20 carbons. The category of LCPFAC chemical substances also includes the salts and precursors of these perfluorinated carboxylates. EPA states that in addition to the subset of LCPFAC chemical substances identified, PFOA and its salts are considered LCPFAC chemical substances and are subject to the final rule.

EPA states that it is also amending the existing SNUR at 40 C.F.R. Section 721.9582 for perfluoroalkyl sulfonate chemical substances to make the exemption at 40 C.F.R. Section 721.45(f) inapplicable for persons who import perfluoroalkyl sulfonate chemical substances as part of carpets, which is issued in final as proposed. The perfluoroalkyl sulfonate chemical substances for which EPA is modifying an existing SNUR are currently listed in 40 C.F.R. Section 721.9582(a)(1). EPA notes that in the final SNUR, which is consistent with the proposal and 40 C.F.R. Section 721.9582, the term perfluoroalkyl sulfonates refers to a category of perfluorinated sulfonate chemical substances of any chain length. EPA states that in the 2015 proposed SNUR, as was past practice, perfluoroalkyl sulfonate chemical substances were referred to as “PFAS” chemical substances. According to the final rule, “EPA, however, recognizes that the acronym PFAS is now used for ‘perfluoroalkyl and polyfluoroalkyl substances.’” Moving forward, EPA states that it will use PFAS as an acronym for perfluoroalkyl and polyfluoroalkyl substances.

## **Commentary**

The issuance of the final SNUR on perfluoroalkyl sulfonate and LCPFAC chemical substances has been a long time in the making. Part of the delay can be attributed to the need to meet the new Section 5(a)(5) requirements for including imported articles in SNURs. We note that under Section 7352 of the National Defense Authorization Act for Fiscal Year 2020, EPA was required to “take final action” on the January 21, 2015, proposed rule by June 22, 2020, and that the final rule was signed and EPA posted a prepublication version of it on the June 22, 2020, deadline.

As discussed above, uses that were ongoing at the time of the 2015 proposed rule were not included in the scope of the SNUR. According to EPA, however, import of fluoropolymer dispersions and emulsions made with PFOA and such fluoropolymers as part of articles has now ceased and may become the subject of a future regulation. While EPA does not plan at this time to use Section 6(a) to regulate PFAS, additional future regulation is likely, thus continuing EPA’s almost two-decade effort to identify and manage the risks associated with this broad category of substances.

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## **EPA, Nonprofits Jointly Working to Resolve New Chemicals Lawsuit**

<https://news.bloomberglaw.com/environment-and-energy/epa-nonprofits-jointly-working-to-resolve-new-chemicals-lawsuit?context=search&index=0>

July 28, 2020, 12:14 PM

Reporter: Pat Rizzuto

- Trial not likely needed, both sides tell district court
- Parties disagree on existence of some documents

The EPA and a coalition of five environmental health groups have told a federal court that they're working together to resolve claims that the agency improperly withheld information on new chemicals.

"The parties do not believe there will be a need for a trial," the Environmental Protection Agency and the five groups, led by the Environmental Defense Fund (EDF), wrote in a joint statement and proposed order filed Monday with the U.S. District Court for the District of Columbia.

The EDF, Center for Environmental Health, Environmental Health Strategy Center, Natural Resources Defense Council, and the Sierra Club sued the EPA in March, alleging the agency failed to provide chemical safety and other information about new chemicals to which the public is legally entitled.

The EPA reviews such information, generated by chemical manufacturers, importers, and the agency, as it decides whether a new chemical—one that's never been produced in or imported into the U.S.—can enter U.S. commerce.

"The parties agree that this case can be resolved by motions for summary judgment," they said in the joint statement.

It will take time, however, as the two sides have yet to agree on the existence of some of the documents the environmental coalition says the agency withheld, they told the court.

The lawsuit challenges the EPA's implementation of its new chemicals program since 2016 Toxic Substances Control Act amendments. The amended law included more language directing the EPA to make chemical information public than did the statute it replaced.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

The case is: Environmental Defense Fund v. Wheeler, D.D.C., No. 1:20-cv-762, joint statement filed 7/27/20.

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## **Agency's No. 2 joins Twitter**

<https://www.eenews.net/greenwire/stories/1063644993/search?keyword=epa>

Kevin Bogardus, E&E News reporter

Published: Tuesday, July 28, 2020

One of the Trump administration's top EPA officials recently joined Twitter.

Doug Benevento, EPA's associate deputy administrator, has joined the popular social media site.

"Douglas Benevento, Associate Deputy Administrator of the U.S. Environmental Protection Agency. Tweets are my own," he said in his first tweet last week.

He also posted a photo of his trip yesterday to a Superfund site in Colorado with EPA Administrator Andrew Wheeler and Gregory Sopkin, the Region 8 administrator based in the agency's Denver office.

Asked why Benevento, who is essentially the agency's second in command, has turned to social media, EPA spokesman James Hewitt told E&E News, "We feel it's important one of our agency's top officials has a presence online to amplify agency news and operational developments."

By deadline for this story today, Benevento was only following a few other accounts on the website, including EPA's main feed, Wheeler and President Trump. He has yet to rack up many followers, totaling 17 so far.

Twitter has been a frequent tool of the Trump administration, starting with the president himself. Other EPA officials, like Wheeler and Chief of Staff Mandy Gunasekara, have used the social media site to put out their message.

Trump nominated Benevento to be EPA's deputy administrator and he is "fulfilling the duties of that job" in his current position as associate deputy administrator, according to his agency biography online.

His nomination, however, has stalled.

Sens. Joni Ernst (R-Iowa) and Ted Cruz (R-Texas) have said they can't support Benevento for the deputy job at EPA over how the agency has handled its biofuel mandates. Sen. John Barrasso (R-Wyo.), chairman of the Environment and Public Works Committee, said his panel will not be taking up Benevento's nomination since he lacks the votes to move forward (Greenwire, July 1).

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## **EPA deal sets deadlines for toxic emissions regs**

<https://www.eenews.net/greenwire/stories/1063644881/search?keyword=epa>

Sean Reilly, E&E News reporter

Published: Tuesday, July 28, 2020

EPA has agreed to settle a lawsuit brought by an advocacy group alleging that the agency was in some cases decades late in revisiting harmful pollutant standards for a variety of industrial and commercial sources.

A proposed consent decree would set a staggered schedule running into 2023 for the agency to consider and, if needed, update national emissions benchmarks for lead-acid battery manufacturing plants, dry cleaners and five other sources.

The proposed deal, just released for public comment, would end a lawsuit brought last October by Our Children's Earth Foundation alleging that EPA was as much as 36 years past the respective Clean Air Act deadlines for conducting those relooks.

The foundation, based in Napa, Calif., describes its mission as advocating for children's access to clean air and water. The lawsuit, filed in the U.S. District Court for the Northern District of California, is one in a series that the organization has brought in the last two years that accuses EPA of unlawful foot-dragging in taking required regulatory steps. The agency resolved a similar suit last year (Greenwire, March 5, 2019).

Under current Administrator Andrew Wheeler, EPA has put newfound emphasis on the importance of complying with Clean Air Act schedules for conducting reviews of National Ambient Air Quality Standards and briefly threatened California last fall with a loss of federal highway money over an alleged backlog of state cleanup plans (Greenwire, Sept. 24, 2019).

As has historically been true, however, EPA continues to face — and settle — the legal challenges known among environmental lawyers as deadline suits. Two more brought by the foundation earlier this year have now been consolidated and are on track to resolution, according to a court filing yesterday.

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## **EPA Biomass Carbon Rule Delayed Over Potential Ties To RFS, ACE**

<https://insideepa.com/daily-news/epa-biomass-carbon-rule-delayed-over-potential-ties-rfs-ace>

July 28, 2020

EPA's long-pending proposal to declare woody biomass carbon neutral for stationary source permits under the Clean Air Act is facing delays, with sources suggesting Trump administration officials are concerned that the plan could create a precedent that might affect the agency's power plant greenhouse gas rules or its biofuels policies.

The extended biomass plan delay comes after EPA scrambled to release a series of major final rules -- most prominently a rollback to vehicle GHG limits and a narrow definition of the scope of the Clean Water Act -- earlier this year in part to avoid potential Congressional Review Act attacks from Democrats.

It also comes amid signs that other long-pending rules are facing delays, including proposed tighter air pollution controls for heavy-duty trucks and a final rule scaling back GHG standards for new coal plants.

Issues said to be holding up the biomass carbon neutrality proposal include concerns about how it might affect EPA's Affordable Clean Energy (ACE) power plant GHG rule, which regulates existing coal plants and explicitly excludes biomass as a compliance option, as well as the renewable fuel standard (RFS), which sets biofuel blending targets based on fuels' lifecycle GHG improvement over straight gasoline.

Importantly, the RFS targets are based on biofuels with lower GHG profiles of between 20-60 percent -- figures that do not account for feedstock regrowth as the biomass plan would.

One Capitol Hill aide says concerns over the plan's effects on ACE were raised by the Department of Justice (DOJ) and appear to have been resolved early this week, though the rule has not yet cleared the White House Office of Management & Budget (OMB) interagency review, which began Feb. 24.

Meetings with outside groups wrapped up at the end of March, and sources following the rule's development at the time had hoped for a speedy, 30-day review that has now extended well beyond the normal 90-day period.

The Hill source had expected the proposal to be signed July 22. Acknowledging that deadline slipped, the source nonetheless says all signs still point to its release in the coming days. The source is not clear on how the DOJ concerns were addressed.

Even so, an energy lobbyist tracking the biomass rule says there remains internal EPA disagreement "about the potential crosswalk to the mobile source side," including how a carbon-neutral label for woody biomass will affect the RFS.

"Yes, they are wandering around a bit," the source says. "But I still anticipate something in August."

However, one industry attorney says, “things are up in the air,” raising doubt whether the proposal will be issued at all, while declining to share more details.

An EPA spokeswoman declined to comment on any of the issues holding up the rule, saying only that it is “currently in interagency review.”

## **Outside Pressure**

EPA continues to face strong pressure to move forward with the biomass proposal, including from the forest products industry as well other manufacturers, such as steelworkers, and bipartisan members of Congress.

The agency is also being urged to expand the carbon-neutral designation to crop residues, which could have a direct impact on the RFS. When Administrator Andrew Wheeler testified before the Senate in May, he said he hoped to publish the proposal the following month. He called it the first of a three-phase process that would also address the carbon status of crops, with the broader process unfolding over the next 18 months.

That announcement surprised farm sector groups, with the Corn Refiners Association (CRA) saying it “was certainly news to us.” The group said until March it was led to believe that the pending proposal would address annual agricultural products and it had never been told of a three-phase process. CRA is a member of the Biogenic CO<sub>2</sub> Coalition that continues to press EPA on the issue while also suing the agency over its failure to allow biomass to serve as an ACE compliance measure.

A coalition spokesman urges EPA to take the same position on agricultural crops as Europe and the Intergovernmental Panel on Climate Change, which find they do not contribute to elevated GHGs in the atmosphere on net. “As far as RFS and biofuels are concerned, these are entirely different regulatory regimes under different statutory provisions, and as such should be considered independently,” the spokesman adds.

The Hill source adds there is support for using woody biomass under the RFS, while also noting that many members of Congress have pressured EPA to change the biofuel standard in the RFS to be fairer to different fuel stocks.

Another industry source downplays the concerns said to be holding up the rule’s publication, also noting that both ACE and the RFS fall under completely different Clean Air Act provisions than the biomass rule.

The RFS is “mainly fulfilled through corn ethanol,” while ACE “is based on statutory provisions that are irrelevant to the question of whether biogenic carbon dioxide is regulated” under the prevention of significant deterioration air act program -- the main aim of the biomass rule.

The source notes that EPA has studied the issue for nearly a decade and has solid evidence that using forest products for energy is “highly sustainable” and has an “affirmative GHG avoidance benefit,” arguing it releases fewer emissions when burned for energy than if left to naturally decompose.

If there are discrepancies over effects on other rules, “that is not something that should be a significant concern,” the source stresses, and notes the industry’s eagerness to see the proposal signed.

In a recent Morning Consult op-ed, officials with the American Forest & Paper Association (AFPA) and the United Steelworkers wrote: “An important step toward protecting . . . domestic jobs is definitively designating wood biomass energy as carbon neutral, as it has been elsewhere around the world. . . . Until our bioenergy is designated as carbon neutral, it will be subject to cumbersome regulations and permit processes and can’t be counted on as a fuel of the future. When federal policymakers waffle on the issue of biomass energy, it becomes difficult for domestic companies to compete globally.”

AFPA chief Heidi Brock says in a statement to Inside EPA, “The time has come for the EPA to move swiftly to provide much-needed regulatory certainty” by issuing the biomass rule.

Also, four bipartisan House members, including Reps. Rodney Davis (R-IL) and Collin Peterson (D-MN), and the American Farm Bureau Federation have written recent letters to Wheeler urging him to both issue the rule and include crop residues.



However, environmental groups broadly oppose designating woody biomass as a carbon-neutral fuel, and they hailed the Democratic staff report from the House Select Committee on the Climate Crisis that distinguished “low-carbon sources and biomass that aggravates climate change.”

## **Other Rules**

Meanwhile, EPA is facing delays on other key rulemakings. For example, the agency filed a July 23 status report in a stalled lawsuit over Obama-era GHG rules for new coal plants, writing that it is “preparing the final [replacement] rule package to go to [OMB] for interagency review. Due to delays related to the COVID-19 pandemic, EPA expects to send the package to OMB during the summer of 2020. EPA’s intention and expectation is that the Agency will be in a position to take final action on this proposed rule in the late summer of 2020.”

Issuance of that rule has repeatedly slipped, and EPA previously indicated a final rule would be out by now.

Also, sources have said EPA appears to have given up on efforts to issue its long-awaited proposal to set stronger nitrogen oxide limits on heavy-duty trucks until after the election, despite top officials touting the measure as a win for both air quality and industry. -- Dawn Reeves ([dreeves@iwpnews.com](mailto:dreeves@iwpnews.com))

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## **Meritor Loses Challenge to Superfund Listing of Mississippi Site**

<https://news.bloomberglaw.com/us-law-week/meritor-loses-challenge-to-superfund-listing-of-mississippi-site>

July 28, 2020, 1:39 PM

- Meritor took on liability of Rockwell International
- Residential exposure assumptions reasonable

A defunct Mississippi wheel-covering facility will stay on EPA’s hazardous waste cleanup priority list after a federal appeals court in Washington, D.C., found Tuesday that the agency didn’t need to consider Meritor Inc.’s vapor mitigation efforts in its Superfund listing decision.

The Environmental Protection Agency wasn’t limited to considering only toxic emissions that occurred after Meritor installed a vapor mitigation system when it assessed the site for the National Priorities List, the U.S. Court of Appeals for the D.C. Circuit said.

The court rejected the argument that the EPA must consider mitigation measures when assessing a contaminated site’s potential for exposing people to toxins. In this instance, the court said, the agency had no need to evaluate the potential for exposure at all because it documented an actual, observed exposure at the property.

The agency cited multiple “observed exposures” in indoor samples taken from the site in October 2016 and January 2017, and those samples registered toxins of more than three times background levels.

That direct observation justified why, under the regulations, the EPA automatically assigned the maximum score for the “likelihood of release” of hazardous substances regardless of mitigation, the court said.

The court also found the EPA’s use of residential, rather than industrial, exposure assumptions reasonable.

When making listing decisions, the agency uniformly uses residential assumptions because it favors a more conservative approach, the court said.

And by using the more conservative benchmark, the agency accounts for both present and possible future land use conditions, the court said.

The EPA added the Rockwell International Wheel and Trim facility and surrounding areas in Grenada, Miss., to the NPL in 2018. The site is contaminated with toluene, trichloroethylene, and 1,2-dichloroethene.

Meritor assumed liability for the site when it was spun off from Rockwell International.

Judge Patricia A. Millett wrote the opinion, joined by Judges Gregory G. Katsas and David B. Sentelle.

Hogan Lovells US LLP and Thompson Hine LLP represented Meritor.

The case is Meritor Inc. v. EPA, D.C. Cir., 18-01325, 7/28/20.

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## **D.C. Circuit Rejects Industry Challenge Of EPA Vapor Intrusion NPL Listing**

<https://insideepa.com/daily-news/dc-circuit-rejects-industry-challenge-epa-vapor-intrusion-npl-listing>

July 28, 2020

A federal appeals court has rejected a first-time industry challenge to EPA's Superfund listing of a vapor intrusion site, dismissing arguments that the agency should have accounted for mitigation efforts in place at the site and applied industrial, rather than residential, exposure scenarios when scoring the site for the National Priorities List (NPL).

The unanimous ruling, issued July 28 by the U.S. Court of Appeals for the District of Columbia Circuit in Meritor, Inc. v. EPA, deals a blow to an industry attempt to strike down one of the first vapor intrusion listings on EPA's NPL, following the agency's 2017 addition of subsurface intrusion to listing calculations.

"Meritor's main objection is that the EPA failed to take sufficient account of an already installed sub-slab depressurization system in determining the hazardousness of the site," says the opinion, written by D.C. Circuit Judge Patricia Millett on behalf of fellow panel Judges Gregory Katsas and David Sentelle.

"Because the EPA's decision was reasonable and consistent with the governing regulatory provisions, we deny the petition for review."

The case drew the interest of major industry groups that filed as amici parties backing Meritor, expressing fear that EPA's "improper determinations" would set a precedent that could widely affect thousands of manufacturing, industrial, chemical and other companies and sites across the country that may have vapor intrusion issues, according to the parties' August 2019 brief.

At issue was the agency's listing of the Rockwell International Wheel & Trim site in Grenada, MS, to the NPL based solely on the presence of vapor intrusion. The site is a working plant, where a 2016 EPA study documented indoor air quality in its main production building as having elevated concentrations of toluene, trichloroethylene and cis-1,2-dichloroethene, the ruling says.

The litigation appears to be the first challenge of EPA's use of a 2017 Hazard Ranking System (HRS) rule that allows the agency to list contaminated sites based solely on the presence of vapor or water intrusion, known as subsurface intrusion (SsI).

EPA in May 2017 quietly put into effect the Obama-era rule, which adds an SsI component to the HRS under the rule's existing soil exposure scoring pathway. EPA uses the HRS to evaluate and score sites for possible placement on the NPL.

Meritor, an auto parts company that is a potentially responsible party at the Rockwell site, argued that the listing was arbitrary and capricious and violated the Administrative Procedure Act because it failed to account for the effect and operation of a sub-slab depressurization system (SSDS) -- which mitigates vapor intrusion in buildings -- when EPA calculated the HRS score and applied residential, rather than industrial, exposure scenarios.

But the three-judge panel rejected all of Meritor's arguments, giving deference to EPA and upholding its score for the site and listing.

### **Court's Ruling**

First, on the matter of whether EPA should have accounted for Meritor's mitigation system when scoring the site, the court strikes down the various arguments the company makes, and concludes, "It certainly was not arbitrary and capricious for the EPA to apply its regulations as written."

Generally, the court finds that Meritor misconstrues what EPA looked at to determine the HRS score. For instance, while Meritor was correct that when EPA assesses the "potential for exposure," it should consider whether a mitigation system has been installed, the court explains though that the agency here did not assess the potential for exposure because it had already documented "an actual, observed exposure at the site."

"Sensibly enough, the regulations do not require calculating the 'potential' for exposure when the reality of actual exposure has already been documented," the court says. "Nor do the regulations factor in abatement efforts when evaluating whether there has been an observed exposure."

The direct observation of exposure meant EPA automatically assigned a maximum score of 550 for "the 'likelihood of release' component without regard to mitigation measures," the court says.

Further, Meritor makes another argument that mitigation systems must be factored in when assessing the population within the contamination area, but here, EPA never relied on that population factor, the court says, "so it had no occasion to look at mitigation measures through that lens."

Second, Meritor argues that EPA was arbitrary when it applied a residential health benchmark in evaluating the "targets" metric for the HRS score.

But Millett in the opinion reviews EPA's process and says, "First, nothing in the text of the [HRS] expressly instructs the EPA to use site-specific exposure assumptions on the front end of the process when it is selecting the appropriate health benchmarks.

"The regulation, instead, instructs the EPA to use 'health-based benchmarks' as set out in Table 5-20."

She adds that the benchmark selection regulation does not mention site-specific characteristics, like residential or industrial use. "Nor does it mandate that the EPA adopt any particular exposure assumptions."

In addition, she says, the HRS "accounts for the lower exposure faced by workers relative to full-time residents on the back end of its calculation."

"So at bottom, because the [HRS] already accounts for the workers' reduced hours of exposure relative to residents, the EPA reasonably relied on residential health exposure assumptions when selecting the appropriate health benchmarks." Further, she says, the system mandates those divisions by three or six regardless of which health benchmark is used, and therefore if Meritor's reasoning is followed, EPA would have "twice reduced the 'targets' score based on worker status," double discounting that factor.

In addition, the court says it was reasonable for EPA to use residential exposure assumptions, as it uniformly uses such assumptions because it favors a more conservative approach when making listing decisions. The

agency uses uniform residential exposure assumptions across all sites and pathways to ensure that the HRS accurately measures relative, instead of the absolute, risk of different sites in identifying priority sites. And by applying a more conservative benchmark, EPA accounts for present and future land uses, the court says.

“Because the EPA has reasonable policy reasons for starting out with a residential health benchmark, and its analysis properly adjusted the Rockwell Site’s score to account for workers’ reduced hours of exposure, the agency’s use of a residential health benchmark in calculating the ‘targets’ score passes muster.”

In addressing Meritor’s third argument -- that EPA’s measurement of the waste quantity was incorrect -- the court says the plaintiff’s arguments are forfeited because it did not raise them previously to EPA.

For parties to challenge an NPL listing, they must clearly present them to EPA before raising them in a petition for review, the court says. Meritor only previously advocated for consideration of the SSDS somewhere in the “waste characteristics” analysis, but it “did not put the EPA on notice of Meritor’s specific objection to the tier used in the agency’s waste quantity analysis,” the court says. -- Suzanne Yohannan ([syohannan@iwpnews.com](mailto:syohannan@iwpnews.com))

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## **House Lawmakers Spar Over Future PFAS Drinking Water Regulations**

<https://news.bloomberglaw.com/environment-and-energy/house-lawmakers-spar-over-future-pfas-drinking-water-regulations?context=search&index=0>

July 28, 2020, 2:03 PM

- EPA’s decision on perchlorate reflects need for change, Democrats say
- House Republicans push for bipartisan provisions

The EPA’s lack of enforceable drinking water limits for PFAS and perchlorate shows the decades-old process for protecting the public from contaminants isn’t working, House Democrats said Tuesday.

The Safe Drinking Water Act gives the Environmental Protection Agency too much discretion to decide not to regulate chemicals that may pose a risk to human health, said Democrats on the House Energy and Commerce committee, including chairman Rep. Frank Pallone (D-N.J.).

Republican members were concerned the legislative changes the majority is contemplating could force small water utilities to use ineffective methods to control water quality.

Rep. Paul Tonko (D-N.Y.), chair of the committee’s environment subcommittee, didn’t indicate what specific changes Democrats may pursue.

“Let’s take the information we garner here at this hearing and go to work and make certain that we can move forward with the protections that the general public deserve and require,” Tonko said at the subcommittee’s virtual hearing Tuesday.

Republican subcommittee members were frustrated at the prospect of Democrats pushing drinking water program changes through without their support. They were concerned about the possibility of changing the cost-benefit analysis the EPA’s drinking water program must conduct before setting new limits.

Dropping the cost-benefit analysis could require the EPA to make regulatory decisions based only on the resources of large water systems, forcing smaller ones to use less effective methods to remove contaminants, said Rep. Greg Walden (R-Ore.), the full committee’s ranking member.

The Safe Drinking Water Act, which falls under the committee's jurisdiction, is due for reauthorization this year. A Senate bill (S.3590) reauthorizing the program was introduced in May.

## **Regulating PFAS**

The EPA has a health advisory level in place for two PFAS chemicals in drinking water, which is not enforceable but guides some states' cleanup and enforcement actions. The agency also decided earlier this year it would not regulate perchlorate in drinking water, leaving states to decide whether to take action.

States need help to prioritize and take action on PFAS chemicals, said Diane VanDe Hei, chief executive officer of the Association of Metropolitan Water Agencies.

"They need EPA in particular to make the determination on which of those contaminants present the most significant threat to public health," she said.

Since the EPA has enough information to set a health advisory, it should establish an enforceable standard for those chemicals, Tonko said.

Rep. John Shimkus (R-Ill.), ranking member of the subcommittee, said any federal effort to regulate the family of thousands of per- and polyfluoroalkyl substances as a group would be misguided.

"It would be helpful to focus on the ones we know are bad," Shimkus said.

## **OMB Review**

The House passed a fiscal 2021 spending package Friday that would ban the EPA from using funds to backtrack on its preliminary decision to regulate PFOA and PFOS, two PFAS chemicals, in drinking water.

The agency didn't testify at the subcommittee's virtual hearing Tuesday.

The EPA sent two proposals to the White House Office of Management and Budget for review on Monday. The first proposal, on how to destroy and dispose of PFAS, is expected to provide temporary guidance on the most effective methods and technologies.

The second proposal sent for review would determine which contaminants drinking water systems should start monitoring for. The EPA expects to include PFAS in the list of monitored contaminants.

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